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1791
RIGHTS OF CITIZENS;

BEING

AN INQUIRY

INTO SOME OF THE

CONSEQUENCES OF SOCIAL UNION,

AND

AN EXAMINATION OF

Mr. PAINE'S PRINCIPLES

TOUCHING

GOVERNMENT.

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TO THE RIGHT HONOURABLE

EDMUND BURKE.

S I R,

BY your having approved of the following work, when it was laid before you some months ago, I am encouraged to introduce it to its readers under your protection.

David Bickerstaff, V. 11/11/10

A Friend, of whose judgement I think highly, but upon whose impartiality I ought not, I hope, to reckon, recommended to me to enlarge my book, by taking a more comprehensive and systematic view of the theory of Government ;—uncertain, however, whether what I HAVE written will be read, I for the present publish this small treatise in its original form : if it should attract more of the public notice than I expect, it will then

be time enough to enlarge my plan, by turning the subject farther in my thoughts;—what I send to the press is bulky enough for an offering to oblivion.

The pamphlet has, indeed, undergone some alterations since you saw it; but they are such as do not affect principles, and are, in truth, altogether trifling:—I was apt to think that *a Light which I should strike from the collision* of Mr. Burke with any Man, or any opinion, might illustrate nothing so strongly as my own vanity.

With sincere respect for your learning and talents, and, which is infinitely more to your honour, that Virtue which seems to have directed you in the exercise of them,

I remain, SIR,

Your obliged humble Servant,

LONDON,
Nov. 4, 1791.

THE AUTHOR.

RIGHTS OF CITIZENS.

Je tâcherai d'allier toujours dans cette recherche ce que le droit permet avec ce que l'intérêt prescrit, a fin que la Justice et l'Utilité ne se trouvent point divisées.

ROUSSEAU, CONTRAT SOCIAL.

I HAVE read the Rights of Men ; and sit down to impugn the system of Mr. Paine, and to search the important subject which his book brings before me ; a subject far more full of intricacies than he seems aware of. They are principles with which I have to do ; nor shall I meddle with the French Revolution, except as it is traced to such whose sufficiency to justify it I deny. Whether the French system of Government required alteration, is one question ; a question

tion upon which I imagine there can be but one opinion ; the merits of that frame of Government by which the Revolution hath been succeeded afford another subject for reflection : into this Mr. Burke has in his excellent book largely gone ; a work of which it is hard to pronounce, whether the force or tendency be most commendable ; and whose complicated truths, whilst they are at once overlooked and contemned by superficial presumption, will be *gradually* discovered and respectfully recognized by the candid, well-intentioned, inquiring mind.

With him, the example of the French Revolution in England excites my attention : it may be salutary or otherwise, according as this latter nation is taught to discriminate between its own situation and that of France, or to confound them together ; according as the conduct of the French is excused upon circumstances, which were peculiar to *their* country, or cunningly referred to principles which may embrace *ours* ; according as the disposition of the multitude, to tumult and innovation, is checked or promoted ; according as men are cautiously led on to judge usefully and dispassionately ; or are roused
to

to an enthusiasm fitted for the destructive maxim which is then infused—that if your Constitution is not perfect, it should be overturned. No gradual improvement; but sudden destruction, and Rights of Men ;—*gaudetque viam fecisse ruina.*

Arguments drawn immediately from original principles are not unusually fallacious : the pleasure we feel in being thus able to obtain with facility from such simple premises, a conclusion so vast and general in its operation and effects, renders us too hasty in its application. I have always understood that the province of reason was rather to discriminate than combine ; of practical reason, at least, this is true : the Rights of this or that Man, or of this or that People, are as imperfectly defined by giving us a sketch of the Rights of *Man*, as the person of an individual is ascertained by informing us that he is *a rational animal* : it is in both cases but an outline ; and one that, even so far as it goes, is in neither case universally true : in short, knowledge too often detects first principles only for ignorance to misapply them. Men may, however, in arguing fall into the other extreme : a recurrence to elements, by simplifying

plifying the subject under consideration, relieves the mind from a load of circumstances with which it was encrusted, and assists the reason in forming a neat and precise conclusion. But the sketch thus taken, requires the colouring of living manners to raise it from the canvass, and animate it to a true and just resemblance: the harshness of metaphysic lines must be softened and concealed by the clear-obscure of moral truth. If it be a fault to be ever checking this disposition of the mind to soar to original principles, and detaining us midway amongst combinations of private feelings, usage, prudence, or convenience, it is a fault which cannot be imputed to Mr. Paine; who, on the contrary, is continually assisting you to throw out ballast, till you are lifted out of sight of all fabrics of human contrivance; and, having brought you to those sublime heights, he keeps you out of reach of all useful and practical inference: but in both cases the tendency of the mind is obstructed; which if left to itself, when full of its subject, will first soar and speculate; and, by degrees, descend and practise.

As it is in some measure foreign from my subject, and only tends to impeach the candour of Mr. Paine, (a quality by no means unworthy a warm friend to liberty and a philosopher) I shall here bring forward an accusation against him on this score, and get rid of it. In page 8 of Mr. Burke's pamphlet, is the following passage, " Abstractly
 " speaking, Government as well as Liberty
 " is good ; yet could I, in common sense,
 " ten years ago have felicitated France on
 " her enjoyment of a Government (for she
 " then had a Government), without inquiring
 " what the nature of that Government
 " was, or how it was administered."—

Who should recognize this passage in the misstatement of Mr. Paine (page 20) which I am about to cite ?

" Mr. Burke," says he, " appears to have
 " no idea of principles when he is contemplating Governments : *Ten years ago, says
 " he, I could have felicitated France on her
 " having a Government, without inquiring
 " what the nature of that Government was ;
 " or how it was administered.*" Such is the
 professed quotation from Mr. Burke ; and

Mr. Paine thus proceeds to combat the sentiment which himself has raised for the purpose of displaying his prowess on it ; “ Is this,” continues he, “ the language of a rational man ? Is it the language of a heart feeling as it ought to feel for the rights and happiness of the human race ? ” No, no, I confess it is not ; and it is not therefore the language of Edmund Burke. But let us hear what farther Mr. Paine says : “ On this ground Mr. Burke must compliment every Government in the world, while the victims who suffer under them, whether sold into slavery, or tortured out of existence, are wholly forgotten : it is power and not principle, that Mr. Burke venerates ; and under this *abominable depravity* he is disqualified to judge between them.” Which of the Rights of Man authorize this libellous misstatement ? Contrary to all legal principles, my accusation of Mr. Paine shall be in the disjunctive ; he shall choose between a vehemence which could so grossly misunderstand, and a prejudice which could tempt him so malignantly to misrepresent. To return from this digression and enter on my subject. After an allusion to Doctor Price’s Sermon, and an
 implied

implied admission of the assertions it contains, (which, observe, are not simply that the people of England have a right to choose their own governors, to cashier them for misconduct, and to frame a Government for themselves, but that * this right *has been acquired by the principles of the Revolution*) Mr. Paine begins the attack by setting violently upon that part of Mr. Burke's argument which is conversant about the Bill of Rights, though it was naturally called for by Doctor Price's assertion above alluded to ; and though its tendency is only to extract the principles of the Revolution, misrepresented by Doctor Price, from the acts and declarations of those by whom it was brought about ; where alone those principles are to be found ; though Mr. Burke's argument contains no contradiction of any such incontrovertible assertion, as that “ a law not repealed continues “ in force, not because it *cannot* be repealed, “ but because it *is not* repealed :” (a position, to which I shall take the liberty of subscribing in Mr. Burke's name as well as my

* The existence of which, if there be any distinction between *Right* and *Power*, is not so clear ; at least, it must be understood with some qualification.—We shall have occasion to speak more of this Right.

own ; and which is so true, that it is a pity it is so inapplicable ;) nor any such absurd assertion as that “ a certain body of men, “ who existed a hundred years ago, made a “ law, and that there does not now exist in “ the nation, nor ever will, nor ever can, a “ *power* to alter it.”—No such assertion is to be found in Mr. Burke’s argument, nor is any such principle to be collected from it ; but when Doctor Price, waving the Rights paramount of Man, condescended to take up with Rights of only a hundred years old, supposed to be acquired by the Revolution ; Mr. Burke met him on this ground, and fought for the spirit and principles of the Revolution in the records of that period. Was this unfair, or inconclusive ? When Doctor Price boasted of those Rights as acquired to us from our ancestors ; as being their gift ; he seems to have admitted some sort of connection between them and us ;—and to his assertion Mr. Burke’s answer was directed ; Mr. Paine, it is true, has taken new ground, or rather *no* ground ; and reminds me of a magician of whom Ariosto tells, that never encountered you on fair ground, but with the assistance of a flying horse came pounce upon you every moment,

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and

and was out of sight again before you could make resistance ; the only weapon of offence this magician used was a book, with which he continually went forth armed ; and which was not—any more than Mr. Paine's—the book of Genesis. Let us see whether out of some common sense, and some good intentions, I can compose a spell which will enable me to dissolve the enchantment.

When we talk of one generation as distinguished from another *which immediately preceded it*, we talk of that which hath no existence ; it is therefore idle to discuss the Rights of a non-entity. No point of time can be assumed wherein to place the contrasted existence of this ideal being : it is not the link of a chain which we may disconnect and consider singly ; it is a particle of fluid inseparably clinging to those around it in the stream of general existence. Indeed, when we speak of one generation as distinguished from another which existed a thousand or two thousand years before it, or which may exist a thousand years after it, we speak to be understood ; and the arguments which we obtain by contrasting them will be fair, and may be conclusive. “ In order” says Mr. Paine,

Paine, “ to arrive at a more perfect decision
 “ on this head,” (he is speaking of the Right
 of a nation to establish a particular family
 with hereditary powers :) “ it will be proper
 “ to consider the generation which under-
 “ takes to establish a family, &c. *apart and*
 “ *separate* from the generations which are to
 “ follow ; and also to consider the character
 “ in which the *first* generation acts with re-
 “ spect to succeeding generations.”—Before
 I pursue the reflections which the above pas-
 sage raises, and state my objections to admit
 this *separate* consideration of different gene-
 rations as a ground of argument or inference,
 let me premise, that I do not confine my
 thoughts to the particular claim which Mr.
 Paine instances, viz. that of establishing an he-
 reditary power ; but apply myself to the ge-
 neral question and to every establishment.

If generations did exist distinctly and un-
 connectedly, who would deny, that the claim
 of one to bind another by any establishment
 would be so unfounded as to be ridiculous ?
 Such a claim rests only on the fact being other-
 wise ;—who will deny that the fact is other-
 wise ? This division of a people into distinct-
 and insulated generations is a source of never-
 ending

ending sophistry : the very names by which we designate nations, as Greeks, Romans, &c. imply an unity of existence carried through successive and *connected* generations : the line is even at last not easy to discern, and the separation between ancestor and descendent nations is softened and shaded away ; we perceive that the connection is no more, without being able to ascertain the moment it had an end : so intent is that nature which “ on change duration founds,” to preserve the privy which Mr. Paine would annul. Powerful are the arguments which Nature furnishes : they seize at once upon the mind, and the stronger it is, subdue it the more effectually ; but he who exacts from us this painful attempt to consider separately what exists connectedly, deserts the ally on whose strength was his dependence : must we not confess that those relations and connections, which are the work of Nature, are to all purposes of sound and conclusive reasoning, essential to and (if I may so express myself) entering into the existence of the thing related and connected ? Metaphysics may separate them, but philosophy will contemplate them united.

Such,

Such, and so intimately connected are successive generations, *each* with that *immediately* preceding it ; and it is because of this priority that the establishment of one is no usurpation upon the rights of the other ; or, indeed, to consider the matter more properly and accurately, it is so strictly true, that successive generations have not this distinct and unconnected existence, that they cannot, *even in their acts*, be thus separately considered. They involve the relations of ancestor and descendent, and, contracting the sphere, of father and son :—out of the two last mentioned are formed the two immediately adjoining generations : to the former generation, (if the expression has any meaning) when we would consider them separately, the father must be assigned ; and the son to the latter. Now this philosophy, which dissolves the bonds of union between parent and child, appears to me objectionable, nay, perhaps, not quite natural. The son, who, whilst he tramples upon the law which his dead father helped to make, can expose the absurdity of one non-entity making laws to controul another, may be a great philosopher ; but certainly is not a good man. But are adjoining generations actually separated ?

or

or ought they for any purposes of useful investigation to be considered as having this distinct existence? Certainly not : there are at all times different generations (so far as this word means any thing) in existence together ; arrived respectively at different degrees of maturity : while the child is yet incapable from youth of acting for himself, nature has provided for his interests by inspiring the parent with that instinctive love of his offspring common to all animals, and which is in man directed, enlarged, and prolonged by reason, and by social life. For a time the establishment (be it of what kind it may) rests upon a something compounded of parental authority, and of the acquiescence of children ; an acquiescence purchased by the benefits of that lengthened connection between parent and child, unknown to savage man, and which is peculiar to social civil life, purchased by the benefits of the very establishment itself. Thus it is a rule of law, (derived from a principle of natural justice) that if a man devise some property which is his own, and some which is not ; and the true owner of the latter take a benefit under that part of the will which is conversant about the former, HE shall not controvert the tes-

tator's title to that property over which he usurped a right of alienation.

By and bye the rising generation come forward themselves, full of that respect which is due to age from conscious inexperience ;* mingling at first in the deliberations of their fathers, and supplying their places when they are no more ; interfering in every act ; functioning, amending, enacting, in all matters which are to bind them ;—casting an eye, however, to their immediate descendants who have now stepped into that place, which themselves had so lately occupied ; and upon the veneration which themselves have shewn for the establishments of their fathers, resting much of their claim to their children's acquiescence in their own. This continues successively true, and then each establishment becomes efficacious, permanent, and just. The father and the son (to draw an instance from the British Constitution ; for I cannot altogether agree with Mr. Paine, that we have no Constitution :) the father and the son sit together in the

* A natural sentiment which youthful presumption may occasionally seem to choak ; but which nothing short of modern Philosophy can eradicate.

same Parliament ; or the one is elector and the other representative ; or, in some way or other, the latter has a share in establishing whatsoever he shall be bound by.

Am I mistaken in supposing, that what I have said obviates the absurdity held up to our ridicule in the following question : “ *In such cases who is to decide ? The living or the dead ?* ” May I not answer “ the living,” and still maintain my ground ? May I not retort the absurdity of “ one non-entity making laws to bind another non-entity ;” and ask in my turn, is he serious, who inveighs against an usurpation of the rights of one non-entity by another non-entity ?”*

“ Nothing can come of nothing : speak again.”

“ If the first generation” (to use Mr. Paine’s own expression) “ changed itself from a *legislator* to a *testator*, and affected to make its will, which should have operation after the demise of the makers to bequeath the Government,” I should perhaps agree with Mr. Paine, that the first generation exceeded the bounds of its authority ; and I might

* His insulated generation is absolutely a non-entity ; no such thing exists in *rerum natura*.

consider such *devise* as *wholly* inoperative, unless it might be against those who took benefit under it ; but if I should think the case better illustrated by another branch of the law, and see the first generation calling in the assistance of its issue to make such *settlement* of their *unalienable* rights as should be for their mutual benefit ; if I should observe that all dispositions and establishments derive permanence only from such concurrence of the next taker, I might deny the inference of Mr. Paine, whilst I admitted his principle.

The wonderful conduct of nature in making *permanency* consist with *change*, seems to point out to us an object for imitation, and to direct that our establishments should be durable : the almost instinctive reverence which we have for old institutions, or old men, seems pointed to the same useful end ; in both cases it is either an instinct, (which, though blind, performs its work effectually, like a mole, in the dark) or if it be a tribute due from reason to that experience which is presumed to be the acquisition of age, the institution of long standing has a better title to it than that of the old man ; being an accumu-

accumulation of greater age, and wisdom, and experience. When, therefore, Mr. Paine commends the French for their respect to age, and at the same time professes his disregard for institutions upon the score of antiquity, he is inconsistent.

Livy, who was a friend to liberty, and a great man, was not ashamed of an almost superstitious veneration for antiquity. He justifies under it his accounts of prodigies : —“ Ceterum et mihi, vetustas res scribenti, “ nescio quo pacto antiquus fit animus: et “ quædam religio tenet, quæ illi prudentif- “ simi viri publicè suscipienda censuerint, ea “ pro dignis habere, quæ in meos annales “ referam.”

Mr. Paine discourses much of “ *the unity of man* ;” by which indeed he tells us he understands that “ man is all of *one degree*, and “ consequently that all men are *born equal*, “ and with *equal* natural rights, in the same “ manner as if posterity had been continued “ by *creation* instead of *generation*.” With regard to the first part of this passage I have to say—that in spite of all Mr. Paine’s assertions to the contrary, *natural* rights, and
civil

civil rights, are so distinct, as to be in some instances contradictory ; and that one very material *civil* right is that of individuals, to be secured in enjoying the advantages of an *inequality*, which is not a *natural right*, i. e. is not a *right* whilst men continue in a state of nature : indeed we may think that civil society, with its consequent rights and benefits, is a state to which the human race has a natural inevitable tendency, and in this point of view may call *it* and its attendant rights *natural* ;* but when Mr. Paine speaks of natural rights, he clearly means to recall the mind to the contemplation of man in a state of nature ; and proceeds to inform us which of his natural rights (thus understood) are retained in a *civil* state, and which not : now this appears to me a very false system ; of which I shall have occasion to speak more hereafter. I am well aware of Mr. Paine's meaning, when he says, man is all of one degree ; and that all men are born with equal natural rights : I know he means, that the

* But taking natural rights in this sense—men are not all born with equal ones ; the rights of any given Athenian before Solon gave laws to the city, were not the same with those of his descendents, after those laws had existence.

man born to day has equal natural rights with his ancestor who was born two thousand years before ; and it is this assertion, thus understood, which I have been endeavouring to prove not true ; or, at least, not material : my argument is, that natural and civil rights being not the same, but even frequently incompatible, I, a *civil* man, enjoying civil rights and benefits, have not equal natural rights with my savage ancestor who died two thousand years ago, uncivilized ; because certain of those *natural* rights have in the mean time been bartered, by an intermediate ancestor, for certain other rights, (viz. *civil* ones ;) and I, by partaking of and claiming to exercise these latter, have acquiesced in the exchange ; and my natural rights are in part gone, at least they are suspended. If indeed I chuse to renounce my civil benefits, and retire to some part of New Holland, untenanted by any British emigrants, to live on acorns and venison, doubtless I am remitted to all the savage rights of my forefather who preceded me by two thousand years ; and have as incontestable a right to be torn to pieces by wild beasts as he had. Ce que l'homme perd (note the expression) par le contrat social c'est sa *liberté*

berté naturelle, & un *droit* illimité à tout ce qui le tente & qu'il peut atteindre ; ce qu'il gagne, (but Mr. Paine, p. 49, says, society grants him nothing—or, in other words, he gains nothing) c'est la *liberté civile* et la *propriété de tout ce qu'il possède*. Pour ne pas se tromper dans ces *compensations* il faut bien distinguer la *liberté naturelle*, qui n'a pour bornes que les forces de l'individu, de la *liberté civile* qui est limitée par la volonté générale ; et la *possession* qui n'est que l'effet de la force ou le droit du premier occupant, de la *propriété* qui ne peut être fondée que sur un titre positif. On pourroit sur ce qui precede ajouter a l'acquis de l'état civil la *liberté morale*, qui seule rend l'homme vraiment maître de lui ; car l'impulsion du seul appetit est esclavage, et l'obéissance à la loi qu'on s'est prescrite est liberté.*

With respect to his opinion, that things should be considered “as if posterity had been continued by creation instead of generation,” perhaps it would have been more philosophical to conclude, that the mode of continuing the human species, which infi-

* Rousseau.

nite Wisdom has chosen, is the best; that therefore the *peculiar* consequences and circumstances which this mode, as contrasted with the other, draws along with it, are beneficial; and that rights derived from supposing the species continued by that mode which has been rejected, are unfounded and unnatural. Perhaps he ought here to have looked for “the unity of man:” he would have seen that the human race is *one*; though compounded of (but not *broken into*) parts. The continuity is never destroyed: it is an existence apparently fugitive and successive, like that *duration* with which it is connected; or which it helps to form; but when the mind would fix it, it contemplates the afflux of accumulated acquirements from each age to the succeeding one, and for a moment obtains a glimpse of a more perfect existence.

“The circumstances of the world,” says Mr. Paine, “are continually changing; and “the opinions of men change also;” (he might have added, that their opinions change, though the circumstances which should direct and influence their course remain fixed) “and as

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“Govern-

“ Government is for the living and not for
 “ the dead, it is the living only and not the
 “ dead that has any right in it; that which
 “ may be thought right and found conveni-
 “ ent in one age, may be thought wrong and
 “ found inconvenient in another: in such
 “ cases, who is to decide? The living, or
 “ the dead?”

We have already answered the question
 with which the above passage concludes—
 let us now examine the positions it con-
 tains.

The circumstances of the world are con-
 tinually changing, it is true; and it is also
 true that the change is *gradual*; and that
 establishment seems to me the best which is
 most capable of changing, as those circumstan-
 ces to which it should still be adapted change
 —without violent convulsions, or self-de-
 struction. If we would form an establish-
 ment that shall be *durable*, let us not seek to
 render it *eternal*. Mr. Paine confesses those
 circumstances to be in continual change;
 and he would have his constitution, which
 yet, he says, should be adapted to them, un-
 changeable:

changeable : * I may be answered, no ; these are not Mr. Paine's principles : but I assert, and shall prove, that they are ; so far as a man's principles can be extracted from his contradictory assertions. I say, he would plant a tree which is never to bend beneath any wind, but is to be continually torn up by the roots in order to be re-planted : I fear that tree will not flourish.

But let us see whether, if Mr. Paine has any principles, I mistake them : “ A *Government*,
 “ on the principles on which Constitutional
 “ Governments arising out of society are esta-
 “ blished, cannot have the right of altering
 “ itself: if it had, it would be arbitrary.”
 This—if by *Government* we understand that which in strictness it means, viz. *Executive Power*, subordinate to Law, is very true : when the Government, thus correctly understood, attempts to alter itself, it is evidently acting in a capacity which is not Exe-

* When I recommend a pliancy to change in a Constitution, I use the word Constitution, in that complicated and unprecise sense in which it is usually taken. The fundamental principles of a Constitution, I would have firm and immoveable, unless by the hand that laid them ; and this firmness will be secured by a pliancy to change in the appendages.

cutive, and in which of consequence it has no right to act ; it is acting arbitrarily. Thus the old Government (i. e. Executive Power) of France altered, and confounded itself with the *Sovereign Legislative Power*, which should be lodged elsewhere ; and the French Government was therefore arbitrary.

Again, if the person, or the body in whom the whole Executive Power is lodged, be also a branch of the Legislature, as is the case in England, any attempt of such Power to alter itself, and assume the whole Legislative authority, or a greater share of it than is vested in it by the Constitution, is arbitrary and an usurpation ; but the *complete* Sovereign Legislative Power may alter itself so far as is not inconsistent with the fundamental principles of the Constitution ; may act arbitrarily (so far as is consistent with those principles) without usurpation. When the British Parliament empowered itself to sit for seven years, it did not exceed its authority ; because it is as consistent with the principles of the British Constitution that its Parliament should sit for seven years, as for three, or for life ; and this is the true limit, as we shall see, of the Sovereignty of a Representative body of
Legislation.

Legislation. Had the same Parliament enacted, that from thenceforth seats in the House of Commons should be hereditary and not elective ; this had been to exceed the limits of their authority ; for this act would militate against the fundamental principles of the Constitution.

When, therefore, Mr. Paine's assertion, instead of being confined to the *Executive* is extended to the *Legislative* Power, I think it becomes false, unless much qualified. If every Establishment (and what is a Constitution but an Establishment ?) to be durable, should have a pliancy suited to the instability of worldly circumstances and human opinions, I cannot see how this end is better attainable than by allowing the Legislature, (or according to the common, but inaccurate mode of expression, the Legislative part of the Government) to amend the Constitution, and to alter itself, if such alteration have this tendency ; and to this right of amending the Constitution, the Legislative body seems more especially entitled, where, as in France, they have been entrusted to frame it ; their Right to do either is derivative, and I cannot see why they should not be permitted to regulate
that

that machine which they were employed to construct. A Constitution, says Mr. Paine, shall be framed by the nation, represented by its delegates. The circumstances of the world, he says, and the opinions of men, are changing, and * establishments should change with them : how shall this change be affected ?—By the nation. Represented by its delegates ? No. Why so ? They are now no longer “ a Convention to make a Constitution.” They are now “ the delegates of the nation in its *organized* character, they are subordinate to the Constitution.”—Well, but they *are the delegates of the nation*, and it was because they were the delegates of the nation, they had a Right to make a Constitution. Will you deny them the less important Right of † altering the Constitution, though you confess,

* If Mr. Paine meant that Establishments should be razed to the ground, as opinions change, I should disagree from him ; if by their being changed he means rather that the outworks be repaired, &c. I would entrust this to the Legislature. The Legislature may by altering itself, to a certain degree, strengthen and not shake the Constitution : and this seems to be the true criterion of the extent of Right in the Legislature to alter itself.

† The truth is, that deriving the authority of the representative body (as I do) from the Constitution ; I consider them as invested with no rights inconsistent

confess, that alteration is necessary ; inasmuch as human establishments should be at all times commensurate to a varying standard ? Is this consistent ? If a nation is equally and fully represented, we behold the nation in its representatives : If national establishments should admit of change, where can the right of change subsist but in the nation ? From whence it is instantly transferred to the national representatives. The Constitution itself is no more than a sweeping law, one clause of which (in nations which are represented) vests in their representatives a right of making all subsequent laws ; and it is so far from clear, even where the Constitution was formed by the nation itself, *unrepresented*,* that yet the right of making all subsequent laws, vested from thenceforward in the na-

sistent with the principles of the Constitution : therefore when I say, in common language, that they have a right to alter the Constitution, I only mean that they may alter it in things not fundamental : that they may alter it by asserting some of its principles which were ill ascertained, &c. ; but Mr. Paine, who will not go so far, ought, consistently with his own principles, to go farther ; for according to his doctrine of the Rights of the living, the representative body have only to look for authority to their living constituents ; and must (if we admit his system) have always the same Rights which they had at any period.

* But this is not the case in France.

tional

tional representatives, would not extend to entitle them to * amend that Constitution ; that I am decidedly of opinion it has this extent. Laws themselves are intimately connected with the Constitution, and in the fermentation of this mingled mass are deposited the principles of the Constitution. When the people entrust it to their representatives to make laws, they entrust them so far, that it is frivolous to stop here. Whether the nation should act by representation, is a different question. I take for granted that they do ; and say, that in their representatives they have reposed a trust, whilst they retain a *power* and an *interest* to resume it if abused, together with a *Right* which may be said to continue in *Abeyance* till the trust is broken ; and of which, even then, prudence will restrain the exercise in the way of violent proceeding, till it has sought to find a milder remedy. But here, I repeat it, the case is stronger. A Constitution was formed by delegates, chosen to avoid the tumult of a general national Convention ; those delegates continue to represent the

* I shall by and by endeavour to explain more fully how far I conceive *amendment* to be synonymous with *alteration* : or rather, how I understand the word *Constitution*, when I speak of it as admitting *amendment*.

nation ; establishments call for alteration ; the task of alteration is less arduous than that of formation : the inconvenience of summoning the nation still exists ; yet their representatives have lost that national sovereignty, which we should suppose was concentrated in them, and which it should seem was inseparable from their character of delegates, and could never cease while that character remained : they are to go on increasing to inveteracy the ill habit of the Constitution by a diet of laws, full of ill humours drawn from the abuses from whence they sprung ; and at length what is to be done ? The nation is to supersede even the subordinate authority which its degraded delegates possessed, and by electing new representatives to new-frame its Constitution, is to confess, that it had intrusted the making of its laws to persons unequal to the task, and unworthy of its confidence.

The Members of the National Assembly at present, says Mr. Paine, are the delegates of the nation in its *original* character ; *future* assemblies will be the delegates of the nation in its *organized* character. *Future* assemblies !—What ? the assembled representatives

E

of

of a *generation* to come ! What, then, is become of the total independence of one *generation* upon another ? *Organized* ! What ?—The *living* nation deprived of their *originalness* by their *dead* progenitors, and *organized* into insignificance ! Is this inconsistent, or am I dull ? Here the adherents to Mr. Paine's system of the independence of generations one upon the other, have hardly time to stumble over the difficulty of conceiving an organized non-entity, till they are met by another non-entity that has organized it. If it be true as Mr. Paine asserts, page 10, " that what a whole nation chooses to do, " it has a right to do : " I confess myself unable to understand what is meant by a nation being at one time in its *original* character, and at another in its *organized* character, unless Mr. Paine means, that he would suspend the ordinary business of tumult and revolution by an occasional carnival, during which the nation should go about under the mask of constitution and permanent establishment. I cannot, I say, conceive why one who " contends for the rights of the *living*, and " against their being willed away and *controul-* " *ed*, and contracted for by the manuscript " *assumed authority of the dead*," should in
another

another place inform us, that “ the authority of the present National Assembly is “ different to what the authority of future “ Assemblies will be ; that the authority of “ the present one is to form a Constitution ; “ the authority of future Assemblies will be “ to legislate *according to the principles and “ forms prescribed* in that Constitution.” Surely, if we do not look upon the acts of the present National Assembly as the acts of the nation, the Assembly have no right to form a Constitution ; but if they be the acts of the nation, so then will be the acts of any future representative Assembly elected upon similar principles ; but “ whatever a “ nation chooses to do, it has a right to do ;” therefore its delegates have a right to do whatsoever it chooses to do, and are to look to the will of the living nation, and not to “ *principles, and forms prescribed*” for their authority. Really, when Mr. Paine talks of Constitution, and Organization, and Originalness, and Forms Prescribed, he seems to have forgotten the indefeasible rights of the living, the glorious independence of children upon their fathers ; and to have fallen into the idle notion of our progenitors having a right to bind us, the vulgar error of tranquillity and

permanent establishment. Yet, perhaps, I am mistaken ; perhaps all this is quite consistent ; for the inconsistency seems to me so gross and obvious, that I am tempted to look upon myself as under the influence of misconception.

I have already alluded to two passages, in one of which it is said, that “ a Government (seeming thereby to understand “ the legislative as well as the executive “ power) has no right to alter itself ;” and in another, “ that circumstances are continually “ changing, &c. and that establishments “ should change with them.” Do those two passages, contained in the body of the same argument, give each other mutual support, and consistently tend to one fair conclusion ? Are they not little less than contradictory, unless we suppose the change thus produced in the circumstances of the world, in the opinions of men, &c. to be provided for, and accompanied by periodical corresponding revolutions ? The citizen of Mr. Paine’s State inhabits the neighbourhood of a volcano ;

Horrificis juxta tonat Ætna ruinis :

No

No sooner has the lava of a former eruption mellowed into soil, and begun to smile with cultivation, than all is again overwhelmed in the torrent of a fresh explosion.

“ The Bill which the present Mr. Pitt
 “ brought in some years ago, to reform Par-
 “ liament, was on the same erroneous prin-
 “ ciple,” (viz. with that upon which the
 Parliament impowered itself to sit for seven
 years ; an act, says Mr. Paine, which shews
 there is no Constitution in England.)

So far as Mr. Paine means to assert, that
 any act of Parliament, professing to alter the
 Constitution, shews that there is no Consti-
 tution, I must certainly dissent from him,
 while I consider Parliament as the represen-
 tatives* of that nation, in which I agree
 with

* Parliament, the representatives of the nation !
 What ! The King ? The House of Lords ? As to the
 King, let us remember the small share he has in
 the legislature ; even the French King is, under the
 new Constitution, invested with the right of putting
 a temporary negative upon the proceedings of that le-
 gislature of which he is not considered as a part ; and
 let us reflect whether this power has ever been abused ?
 No ; nor could it ; for small as this power is, it is ba-
 lanced : the limits I have prescribed to myself do not
 permit me to go more at large into this consideration.
 As to the Lords not being national representatives, we
 should

with him, the right of reforming its Constitution resides ; yet on the ground of this general assertion he is content to stand ; how far there may be a paradox in the idea of vitiated bodies reforming themselves, is another question, or rather it will admit of no question that here is a paradox ; which, if I should be willing to excuse in practice, it would be partly for reasons which may be none to Mr. Paine ; it would be, because I look on revolutions as violent remedies, and should exult in obtaining that relief, which they might procure, without incurring that risk which they involve. The very attempt in a vitiated body at a reform of itself, if it do not include circumstances which warrant us in suspecting *fraud*, seems to invite and merit our confidence. Let the reform be then conducted by Parliament, under the eye of an attentive nation, not despising form, tho' more attached to substance ; looking warily

should not forget that a nation consists of the many, and the few ; the poor, and the opulent. The mass of Lords and Commons represents the nation *thus divided* ; and if Lords and Commons were not distinguished, not the nation, but *the majority* of the nation, would be effectually represented. I shall speak more fully on this subject ; mean-while the reader, who has patience to *think*, as I have done, will find, perhaps, that I am not inconsistent.

at the efforts of that body, which, being corrupted, is suspicious; moderate, because powerful; with a firmness prepared to encounter, and a prudence wishing to avoid the tumults of a revolution. If, indeed, I were to consider Parliament, (I mean the nation acting by its representatives; if it be imperfectly represented there is need of reform, and of the reformed representation I speak;) I say, if I were to consider the nation by its Parliament, as incompetent to reform abuses, and to agree with Mr. Paine, that an attempt to amend a Constitution is a proof that there is no Constitution, I should feel the force and the *application* of those assertions, “that circumstances are continually changing”—“that what in one age is found right and convenient, in another may be found wrong, &c.” and I should (if indignation would permit) join in ridiculing the notion of my ancestors having a right to bind me by their establishments. Upon the same ground precisely, on which I disapprove of subversion, do I approve of alteration and improvement. It is by these alterations and gradual improvements that generations are connected in their acts, as in their existence.

It

It is only in the immoveable constitution of Mr. Paine, that we see a generation bound by the single positive act of some preceding one. Old establishments *should not* be suddenly overturned ; because their advantages come attested by the concurrent approbation of those ages through which they have descended ; a testimony to which *we* have nothing equivalent to oppose. Establishments *should* endure occasional improvement in their descent, else that accumulated approbation of successive generations (which alone should give them authority) is wanting. They stand sanctioned by the single opinion of that age which established them ; the single opinion of any succeeding age to the contrary is therefore an equipoise, and their whole weight is gone :—“ Pourquoi donc porte-t-on tant
 “ de respect aux anciennes loix ? On doit
 “ croire qu’il n’y a que l’excellence des vo-
 “ lontés antiques qui les ait pu conserver si
 “ long-tems. Si le souverain ne les eût re-
 “ connu *constamment* salutaires, il les eût
 “ mille fois révoquées.” *

But let us return to our text : “ the opi-
 “ nions of men change also, &c.” Doubt-

* Contrat Social.

less they do ; and every establishment ought to be so pliable, as to bend to those alterations which a change of opinion will produce : but will not this very circumstance, that our opinions are so liable to change, warrant a certain degree of hesitation and distrust of them ? If this change be no more than the gradual progress of truth and philosophy, whether is it more wise to suffer the alterations and improvements which it may work, (in a Constitution, for example) to proceed gradually and correspondently, or for one set of contemporary men to assume at once the whole task of sudden and entire alteration. To reduce all things to what standard ? That of opinions, confessedly liable to change. But that which those self-opinionated reformers have thus, all on a sudden, “ thought “ right and found convenient, may be found “ wrong and inconvenient ” by some of their descendents : and what is their remedy ? Another as total change (bringing things back perhaps to their first station), conformable to the same varying opinion, and effected with as much precipitancy, and as little reflection, as that which it is intended to correct. “ *That which may be thought right and “ found convenient in one age, may be thought*

F

“ *wrong*

“ *wrong and found inconvenient in another,*” says Mr. Paine : let me add, “ and may be “ *thought right and found convenient in a “ third,*” and the sentence and moral will be both complete.

“ Choose a firm cloud before it fall, and in it
“ Catch, ere she change—the Cynthia of this
“ minute.”

“ *In such cases who is to decide ? The liv-*
“ *ing or the dead ?*” Both ; or, if you please, the living, profiting by the experience of the dead. “ Who,” (says Sir W. Blackstone, and the observation appears not inapplicable to the subject we are upon) “ who that is acquainted with the difficulty of new-moulding any branch of our statute laws, “ (though relating but to roads or parish settlements) will conceive it ever feasible to “ alter any fundamental point of the common law, with all its appendages and consequences, and set up another rule in its “ stead ? When, therefore, by the *gradual* “ influence of foreign trade and domestic “ tranquillity, the spirit of our military “ *n*ures began to decay, and at length the “ whole structure was removed ; the Judges “ quickly

“ quickly perceived that the *forms and delays* of
 “ the old feudal actions were ill suited to that
 “ more simple and commercial mode of pro-
 “ perty which succeeded the former, and re-
 “ quired a more speedy decision of right, &c.
 “ yet they wisely avoided soliciting any great
 “ legislative revolution in the old-established
 “ forms, which might have been productive
 “ of consequences more numerous and ex-
 “ tensive, than the most penetrating genius
 “ could foresee ; but endeavoured, by a series
 “ of minute contrivances, to accommodate
 “ such personal actions as were then in use,
 “ to all the most useful purposes of remedial
 “ justice,” &c. I do not apprehend that Mr.
 Paine would have treated those feudal actions
 with so much delicacy.

Thus have I been endeavouring to answer
 those arguments which Mr. Paine founds
 upon change of circumstances, and upon the
exclusive, insulated right which the living
 have, to conform all things to their own opi-
 nions, rather by contesting the prudence of
 exercising such a right, than by denying its
 existence. I have not combated the rights of
 the living ; but have attempted to shew, that
 they ought not to be *contrasted* with those of

the dead. I have dwelt upon that anxious care with which nature has connected succeeding generations ; so that the individuality of each is lost in that of the human race, of which they become members ; upon that peculiar capacity in man, of enriching himself with the accumulated experience of all who have gone before him ; a capacity in which, perhaps, we behold the true source of civilization. I would not have the childishness of modern philosophy destroy the bird that has been laying golden eggs, in order to search for a hidden treasure ; I would not have the rights of this or that generation, which by standing alone become *contemptible*, opposed to the perfectibility of *man*. I would have, in every establishment, a tendency to *improvement*, which may counteract its tendency to *abuse* ; that, under the impulse of contending powers, it may move in a line as near to excellence as the imperfection of human institutions will allow. If, in consequence of this imperfection, abuses are grown inveterate, reform is become necessary. In a State, when abuses are become incurably inherent in the Government, the Government must be annulled : the *power* which the people at all times had to new-frame their Constitution,

stitution,

stitution, is improved to a *right*. The evil is, that the same persons, in whom a contingency is to vest the *right*, are the judges who decide, whether that contingency has happened. Who need be told that here is need of circumspection ?

Circumstances will determine the unprejudiced observer, whether their conduct be the exercise of a right, or the abuse of a power.

Who should not suppose, when Mr. Paine talks so familiarly of Rights of Man in a state of nature ; and even distinguishes them (as we shall see by and by) into such as are, and such as are not, accompanied with adequate power ; who, I say, but must suppose, that, in this natural state,* right and power were so obviously distinguishable, that they could not be confounded ? Yet justice and morality are confessedly creatures of social life ; and these are what draw the line which separates right from power. The sublime precept to which Mr. Paine triumphantly alludes, “ to do as we would be done by,”

* Which philosophers chuse to reason from ; but in which we have at no time discovered Man.

involves ideas of justice, and social life :
 “ *maxime sublime de justice raisonnée ;*” and
 should not be cited to support claims drawn
 from that imaginary state of nature, of whose
non-existence it may, perhaps, rather afford a
 presumption.

To proceed,

“ We have a right to frame a Govern-
 “ ment for ourselves.” Mr. Paine very
 early adopts this position of Dr. Price as a
 principle. Let us examine its tendency, and
 we shall be better qualified to judge how far
 we ought to acquiesce in, or dissent from it.

What is meant by “ We ?”—the unani-
 mous sense of the community ?—the actual
 assent of every individual of which it is com-
 posed ? Then we are agreed. For as the
individual wills of the members of the com-
 munity can be no otherwise blended into
 one *common general* will, than by a compro-
 mise between those individual wills, which
 their contrariety made necessary ; and as the
 terms of this compromise are settled by their
 individual interests, it follows, that the *com-
 mon will*, thus formed, is directed as much
 to the advantage of individuals as is compa-
 tible

tible with the social state, which they have purchased by this compromise. It is true, the *general will* is one thing, and the *general opinion* is another. *On veut toujours son bien, mais on ne le voit pas toujours.* It is one thing to have an end in view, and another to know the means of attaining it; however, the *general opinion*, thus strictly understood, will probably be right, and should be followed; for though we are to form our opinions cautiously; yet we ought finally to act agreeably to them; and even when we take the advice of another, to act contrary to our own sentiments, still we are acting conformably to an opinion of our own; viz. that he whose counsel we follow, is more likely to have judged rightly than ourselves: the counsel which a people can have, is that of their ancestors; and is to be sought for in the institutions transmitted through ages to them. To neglect this counsel they have at *all times* a right, in pursuit of what they conceive to be their interest;* (so had Achilles
to

* What I would say is, that whenever a whole people chuse to annul their old institutions, from an opinion that it will be conducive to their advantage; the opinion of their ancestors to the contrary ought to enter into their deliberations, and be allowed

to disregard the advice of Nestor :) but how far the exercise of this right is prudent, how far they have found a true estimate of what their interests are, may be another question. The wise man and the fool have alike a right to do that which each conceives will be of advantage to himself without injuring others ; but this right is in the one case highly useful ; in the other highly pernicious.

Therefore, not to get farther into discussions, which may have become tiresome without being useful, we shall say, that though it may be perniciously exercised, (but even this is not likely) yet that which the whole people, (I take it strictly) *wills*, it has a right to do ; because that *general will* which is extracted from the *will* of *all*, is ever directed to the general good ; and the individual people, as the individual man, is justified in acting agreeably to the best opinion it can form, of the means of attaining that *good* which it desires : therefore, “ We (i. e.

lowed its due weight : besides the suffrages of the whole nation ought to be composed of the suffrages of individuals, and not of parties, else the opinion which it announces is probably erroneous ; for individual interests are real ; party interests are often imaginary.

“ the

“ the entire nation) have a right to frame a
 “ Constitution for ourselves.” To deny the
 existence of such a right, would be to deny,
 that the right of framing a Constitution *ever*
 existed in the community. Here is no appa-
 rent contrariety of interests and wills, which
 forces asunder the parts of the community,
 and compels you to consider them disunited.
 The public, to this intent, is an individual ;
 and in all things which regard itself merely,
 without invading any rights of others, it is
 uncontrouledly free : it has a right to be im-
 prudent. But I am alarmed at the dangerous
 ingenuity which justifies a state in the com-
 mission of suicide. Ought it not, at least, to
 be previously ascertained, that the social
 spirit will transmigrate to a better form of
 Government ?

But, 2dly, if by “ We” I am to understand
 the sense, not of the whole nation, but of a
 majority, the nature of the assertion is ma-
 terially altered.

“ We have a right to frame a Govern-
 “ ment for ourselves.” I am now to con-
 template a disunited people : I no longer be-
 hold one community of parts connected and
 G governed

governed by one will ; but I see two wills, which can no more exist together in the same community than in the same man.* One part of this disunited nation claims a right, in virtue of its equality of majority, which I am inclined to dispute. If they claimed no more than a right to frame a Government *for themselves* (the majority) merely, this might produce a question which I decline going into ; and on which I shall only say, that our judgement might, in that case, be influenced by the proportion which the dissentient parties bore to each other in point of numbers : (a consideration which may indeed be extended to the subject, and the claim, before us ; since when the disproportion between the parties becomes enormous, † the *majority* may, for the purpose of

* In considering a society, *individual* wills do not enter into our thoughts, and to suppose two *general* wills existing together, i. e. *one community with two wills*, is an absurdity.

† If the disproportion be inconsiderable, and that any such right of framing a Government *for themselves* exists in the majority, it however does not exist in them, in virtue of their being the majority, but exists as certainly, where the people is equally divided, or if unequally, (yet without such disproportion as will compel us to consider the *majority* as the whole) then this right as certainly exists in the lesser number, as in the greater.

moral

moral discussion, be considered as *the whole*.) But the claim set up, is clearly of a different and more extensive nature : it is the claim of a part of the people, *in right of its numbers*, to overturn the subsisting establishment, and frame a Government for *the whole*. It is a claim of right in a set of individuals, which happens to be the more numerous,* to decide absolutely, in a case which regards not its own common interests merely, but the opposed interest of the lesser number. Let us inquire on what this claim of the greater number to a right of carrying their point against the sense of the less, is founded ; it must be, either on the right of superior strength, and then it stands on the same ground with the right of an arbitrary prince to imprison, or put to death, his innocent subjects ; † or it rests (and this is the truth) on

* I have already said, that where the disproportion becomes enormous, we are not to consider the people as divided, but to look on the majority to be the whole : the reader will keep this in his thoughts as he goes on.

† Let us still remember, that a majority may be so immense, that it shall be counted as the whole ; in this case, also, its acts will be arbitrary, it is true ; but it is no hardship to give a *whole people*, or a *whole man*, the arbitrary Government of itself. Its severity is in both cases well tempered, by a principle of self-love.

an interior contract, supposed to have been entered into by *all* the individuals of the incipient community amongst themselves, vesting in the majority this right of binding the whole. This previous agreement, thus made for the purpose of ensuring that tranquillity, which Mr. Paine would use it to disturb, is just and equitable ; for it confers no exclusive right of binding the whole, on *certain designated* individuals ; but on an ideal majority, which, like the community, has merely a moral existence ; and there is as a great chance, that each of the contracting parties is, by this agreement, acquiring a privilege for himself, as that he is bestowing one : it is at least as likely, that he will himself be a member of the majority, as that he will not. Does Mr. Paine, then, by “ We ” understand the majority ?—and if so, whether, 1st. does he derive their right from the power, with which their number invests them ? (and how far this is a basis whereon to construct a right, we have already considered :) or, 2dly, does he judge, that the interest or the opinion of the greater number ought in justice to prevail against that of the lesser, and to bind them ? or, 3dly, does he found this right upon

upon such a previous contract as we have supposed ?

If he took the second ground, I should inquire, of this *friend to the Rights of Man*, whether one will, in that code, find any law binding one set of men, to suffer their opinions to be controuled, and their interests sported away, by another set of men who have nothing to say to them, only because these latter are the more numerous ? No ; if we are to desert the light of plain sense, and the solid ground of social union, to wander with Mr. Paine through dark regions peopled with natural Rights of Man, (beings whose form is so terrific, it is well they are not substantial) we shall say, that the sense of any set of men should bind themselves only ; and that when they would compel the acquiescence of another set, who dissent, they are invaders ; and these latter are, by every law of nature, entitled to make resistance. This is the case in a state of nature ; but *a majority*—a *set of men acting jointly and concurrently*—is an idea inferring social union. Thus inaccurate are we forced to be, when we would push our inquiries into periods too remote for investigation ! But the fact is, that, 3dly. Mr. Paine

founds this claim of right, on that, which alone will support it, a supposed previous unanimous agreement : on that act which produced *a people* : in short, on the social compact. That he derives it hence is clear ; and will be proved by asking him a single question : does not this right exist in a majority but of one ? Yet a moment might, by the death of that one, re-establish equality ; or it might, by transforming this majority to a minority, devert all its boasted rights, and transfer them to the party which was but now so insignificant.

What but a contract can give birth to such a right ? Thus we have traced the rights of majorities to their source, and found their first existence to be subsequent to that convention which formed the community.

“ If,” says Rousseau ; (and I will borrow this authority, which Mr. Paine has on his paper) “ there were no anterior convention, where would be the obligation on the lesser number, to submit to the choice of the greater ? And whence have a hundred who chuse to have a master, a right to vote for ten who chuse to be without one ? *The law of the plurality of suffrages*
is

“ *is itself a conventional establishment, and*
 “ *supposes a previous unanimity.*” But the question is, as to the extent of this right in the majority : and the question may without much difficulty be resolved. The right of a majority to determine for the whole, is one of the first clauses in the Constitution ; and its existence, therefore, implies the existence of the Constitution : all acts of the majority are binding upon the whole, under the terms of the contract, (which, to borrow a legal idea, operates with respect to the minority by way of estoppel), so long as those acts are consistent with the principles of the Constitution : but in the moment, in which this right is exerted to subvert them, it becomes an usurpation ; and the act, which is directed to overturn the Constitution, operates only as a forfeiture of the right. *One will* is as essential to the unity of a *people* as of a *man* : therefore, in creating a community, this singleness of will is sought for, and obtained, by making the will of the majority, the rule of action of the state ; and this it is, which makes a people *one* ; but when the body politic is dissolved, this general will, thus vested in the majority, is gone with it : it can never have existence for the purpose of
framing

framing a Government, but implies a Government *already framed*. It is the spirit of society, extracted from individual wills, and evaporates in that heat, which decomposes the Constitution.

The right of the majority, being conferred *by* the Constitution, and claimed *under* the Constitution, may, by the principles of the Constitution, be abridged to a certain degree, without affording ground of reasonable complaint to the claimants. It is abridged with us in England: the negative of the crown and the legislative power of the lords are checks upon this right of majority; which, however, is still a prominent feature in ours and every good Constitution; not because there exists any inherent natural rights in a greater number to bind a lesser; but because it being settled by the Constitution that a part shall bind the whole, it is more reasonable to suffer the greater number to bind the lesser, than the lesser to bind the greater. It is more likely that each of the contracting individuals will be one of a majority, than that he will be one of a minority. It is, perhaps, more likely that the public measures adopted will be of general utility. They are certainly

tainly more likely to be peaceably acquiesced in : for these reasons, a principal part of the *national will* is with us lodged in a majority of the people ; for other reasons, which we shall have occasion to hint at, the *sovereignty* of this majority is qualified and abridged. Suffice it here to say, that by the checks which are with us put upon this right of majorities, the public will is, in fact, made to approach nearer to the will of all, by means of that compromise which is the spirit of the British Constitution. The national will, lodged in a majority of the people of England !—Yes :—from the right of *mediately* legislating, (by electing representatives) the Constitution of England excludes no man absolutely ; but on the contrary, tenders the right *conditionally* to all. To the Protestant it says, procure by your industry a *permanent* property, to a certain small amount, and you shall be an elector : (the French Constitution in the same manner requires the inhabitant to pay taxes to a certain amount :) to the Roman Catholic, &c. our Constitution says, become of the established religion, and be citizens. Comply with what the Constitution *requires*, and enjoy the rights it *confers*. Mean time live unmolested : the force

of the Constitution shall protect you from injury. The wealth your industry acquires shall be secured to you. Such is the kind language which the British Constitution holds to dissenters ; this is that toleration which Mr. Paine defines to be the counterfeit of *intolerance*. If the qualifications of voters, as to property, ought to be changed in favour of lease-holders, whose interest is permanent and considerable ; or if the privileges of dissenters should be extended, I would permit this to the discretion of the legislature. Mr. Paine would trust all to the indiscretion of a Revolution. I say, then, the majority of the people may be represented if they *will*. As to the share of legislation, which is lodged elsewhere, than in the Commons ; let me repeat, that I do not look upon those, as capable of estimating the true excellence of the British Constitution, who are fond to contrast the two houses of Parliament, and who consider the rights and interests of the people to reside exclusively in the Lower House.

To illustrate shortly the limits which define the rights of a majority. The principle of a democracy is, that the legislative power shall

shall subsist in a majority of the people, and that the executive power shall reside in the same majority.

Here are constitutional rights vested in the majority. Are they without limit? No. Let this majority enact, that there shall be a monarch; that he shall have a share in the legislative; and exercise the whole executive authority;—they violate that charter which created their right, and their act amounts to a forfeiture of it. Thus again: When in England the Long Parliament assumed to itself (i. e. to a majority of its members) the power of legislation, in exclusion of royal authority, it exceeded those limits, which the Constitution had prescribed to the qualified and abridged rights of majorities.

But the Revolution of 1688! What did the majority in Parliament do there? In the first place, that was a case of urgent necessity; Parliament applied a remedy, which the crisis required should not be delayed, without staying to canvass their rights accurately; and the acquiescence of the people sanctioned their proceedings: such extraordinary cases are not to be brought forward as rules

and examples for every-day practice. Besides, *there* the majority of Parliament (which represents the majority of the people, as the Parliament represents the people) was not subverting, but supporting the Constitution ; acting under it ; and no farther exceeding the rights vested in them, than the unconstitutional conduct, and, if you please, the absence of the King, (though this latter ground of vacancy has ever struck me as a nicety almost frivolous) forced them to do. Through the misconduct of James II. the majority in the two houses of Parliament was deprived of that third power, in which the Constitution had been pleased to vest a right of controuling theirs ; and the only act, in which they exceeded the rights lodged in themselves, was directed to reproduce that power, which should again operate to qualify and abridge them. They assumed a momentary sovereignty, in order to resign it ; and the acquiescence of the nation cured any defect, which might be in the transaction.

Perhaps, after all, the Convention Parliament was exerting a power, and not a right ; but it was exercised in concurrence with the
 opinion

opinion of the greater part of the nation * : it was directed to beneficial purposes : and we, looking back on the transaction, have experienced its good effects. If, then, our ancestors chose to veil this exercise of power, under even a flimsy claim of right ; rather than to avow their *no right*, and assume all the influence of successful power ; we have much room for praise, but none for argument or inference. If Parliament stepped in, even officiously, between the nation and injury ; and, with a laudable piety, threw a veil over the momentary convulsion which distorted their country, let not the indecency of our philosophers tear it aside. When we consider the transactions of the Revolution, with respect to the actors in it ; we shall willingly *confound*, with a *right*, a *power* modestly exercised, and directed to purposes, which experience has proved to be beneficial. But when their conduct is drawn forth, as an example to encourage the almost *daily* practice of Revolutions ; when Dr. Price speaks of the Revolution, as having given birth to a right of cashiering our governors at pleasure ; it be-

* Of such a majority, in England, as amounts to the whole nation in such investigations as the present.

comes proper to look into their conduct more narrowly ; who brought it about ; to investigate with precision those *rights*, which it is *now* become necessary to distinguish from *powers* ; but which (until the Revolution was held up as an example and encouragement for others), the warmth of our approbation, and of our respect, would not suffer us needlessly to canvass. If the rights *then* existed ; it becomes us to inquire, whether they *arose* out of the crisis of the time, or were then accidentally exercised : to see *how far* the Convention Parliament considered themselves as acting in virtue of a right ; and how far they judged the frequent exercise of such a right to be prudent, or dangerous. Any right to new-model the Government, which we possess now, we possessed before the Revolution : and we possess it now, as we did then, conditionally.* A contingency made those rights absolute in *the nation* at that time : a contingency might make them absolute in us again.† The nation then tempered the

* See more on this subject, pages 64, 65.

† If I were inclined to compliment the mildness of the present Government, I should have here a good opportunity ; but I am treating the abstract question. Besides, it is sufficient compliment that I thus detail in argument the persuasion which I feel ; that we have no justification, no proper motive, for troubling the general tranquillity.

harshness of the remedy, which was about to be applied, by preserving the semblance of a subsisting Constitution ; by permitting that to seem done by the authority of Parliament ; which could, perhaps, only be supported by the sovereign will of the nation. The term, “ We,” in Dr. Price’s assertion, adopted by Mr. Paine, is, as I have said elsewhere, so indefinite, that I am stopped, when I might otherwise proceed, not well knowing, against what I should be arguing. The delegates of the people possess all the *absolute, well-ascertained* rights of the people, except those, which the people have expressly excepted, (and they have excepted one right, which was not, in itself, absolute nor ascertained, and which would not, therefore, have passed, even though it were not excepted ;) I mean, the right of subverting the Constitution. For the *deed* of grant, under which the delegates make claim, must be taken together ; and it prescribes what the Constitution shall be. If, indeed, I were to agree with Mr. Paine as to the unconnectedness of successive generations, I should not behold the delegates claiming under any Constitution ; I should not understand what was meant by Constitution, (it being a term involving the idea of some permanency ;) but should we see the nation employ-

employing new delegates to weave a new web, every generation ; therefore, when Mr. Paine speaks of national delegates acting under the authority of an *organized** people, he is inconsistent with himself ; for this people must have been organized by the act of dead ancestors, whose right, Mr. Paine tells you, died with them.

To return : All the *absolute, ascertained* rights of a people are rights consistent with the principles of the Constitution ; all others of the people's rights are *contingent* and *conditional*, and do not therefore exist in their representatives. One of them is to annul the Government, which is full of incurable abuses, that infect the hap-

* The very expression "organized," shews Mr. Paine looks on the people as *bound* by the act of their ancestors, and not merely acquiescent : indeed, if this latter were his meaning, then to pronounce that "future assemblies would legislate according to forms prescribed," &c. would be no better than an absurdity ; it would be to foretell the acquiescence of a future generation ; and let me observe, that if we proceed on this system of mere acquiescence, it will not follow, because future generations, for their convenience, acquiesce in the construction of the representative body, that they shall not be at liberty to renounce the other principles of the Constitution ; or, if they acquiesce (for thus a people usually declares its pleasure) in proceedings of their representatives, which are repugnant to those principles ; yet that such proceedings will not be quite justifiable, though not constitutional.

pineness of the whole nation by their pestilential influence. And this contingent right is not in the representatives*. It is not reasonable that it should. To commit to a few individuals the task of ascertaining, whether such an injury has been done, by an abused Government, to the personal interests of a whole, great people, as that they have acquired a right to annul it, is on the face of it unreasonable.†

* I call this right of annulling the Government a *contingent* one in the nation ; though I have agreed in a former part of this pamphlet, that “ We,” (understanding the whole nation) “ have a right to frame “ a Government for ourselves ;” but the reader will remember, that I grounded this concession of right on a *certainly*, that the *will* of the *whole* people would be directed to the benefit of all ; and on a *probability* that their *judgement* would secure the attainment of their *will*. Surely, then, a right, which we set out with saying *cannot* be *capriciously* exercised, but must await the opinion of the people, that the exercise of it will be advantageous, may be well called contingent ; for the opinion which is not capricious always depends upon events, i. e. must be contingent.

† It is for these reasons, that I look on the Convention in 1688 to have been by no means exercising the common functions or rights of Parliament ; but to have been acting in quite a new capacity : the acquiescence of the people in their (the Commons) entering on the business, amounted to an express delegation of them for that purpose ; and their farther acquiescence in the proceedings which followed, confirmed and sanctioned these. The Lords, not being at any time delegated, continued a subsisting branch of the legislature to act for themselves, and to represent the wealth and dignity of the nation ; happily their interests and inclinations coincided with those of the rest of the nation.

There are cases, in which, the more deeply you are interested, the more competent you are to judge; and this is one of them. At least, he who feels a hurt can best tell that he has received one; and to his instinct it should be left to look to his preservation. It is more just that he, who has been stung by a snake, should destroy the animal on the moment, than that he should refer it to a third person to determine whether or not in fact he has been stung. Every Revolution ought to be brought about by the nation itself. And so sensible were our ancestors of this, that, wishing to conceal that solution of continuity in the Constitution, of which Mr. Burke speaks, they thought no means of concealment more proper, than to let the matter be seemingly transacted by the two houses of Parliament. They spun this fine thread, to join the broken parts of the Constitution. And any cloud, which lies between this event and our inquiries, is only what the prudent aversion of our ancestors, from the appearance and the practice of violence, threw round it. The Revolution *was* the work of the people, and was made to seem the work of Parliament, in order that it might *the less* appear to be a Revolution. But the mischief of Mr. Paine's doctrine

doctrine is, that the hot-headed multitude get in love with this picture of their rights of *cashiering governors*, &c. and, quite forgetting that the possession of them is to be authorized by a previous event, hasten to embrace them, and are punished by the wrath of heaven with a progeny of monsters.

“ Amazement in the van, with flight combin’d,
 “ And sorrow’s faded form, and solitude behind.”

The delegates, then, possess all those rights, which the people have *under the Constitution*. And the right of majority, conferred by the same Constitution, is transferred, from the majority of the people, to the majority of their representatives. This latter right stands, therefore, upon lower ground than the other. It is only the *assignment* of a right, which is itself but *derivative*. An unanimous nation has a right paramount to the Constitution; yet its *unanimous* representatives have no such right.* The majority of the nation have no

* Because this right paramount in the nation is, as we have been endeavouring to prove, one which may fairly be called contingent; since it cannot be exercised, till the whole nation thinks it conducive to their welfare that it should;—an opinion not likely to be formed capriciously, but to depend on events; and therefore itself contingent.

right to bind the whole, except that which the Constitution conferred upon them. *A fortiori*, then, the majority of representatives have no such right, except under the Constitution, and can by no means exert it in subversion of this latter. I have already spoken of our Revolution; I shall here only add, that a power is not the less a power, or the more a right, for being beneficially exercised. Let us suppose a young society just swarming, how will an individual deliberate with himself concerning his own interests in this new state, when he is about to seal the Constitution which is to give permanence to the body social? “ In order that we should keep together,” he will say, “ it will be necessary that *individual wills* be not suffered to have operation; but the community must be connected by one *will*. How shall we obtain a general will, that shall have a constant and uniform operation? We cannot always expect to be unanimous; we must, therefore, leave some to chuse, and others to acquiesce: whom shall we appoint to chuse? I will not consent to name any persons expressly, whom I will invest with such a privilege, to the exclusion of myself;”

“ self ; * but I will vest it in a *part* of the
 “ community, consisting of *indefinite* per-
 “ sons, and this part shall be the majority ;
 “ for, since we cannot always have unani-
 “ mity, we will come as near it as may be ;
 “ and since we are vesting in one part of the
 “ community a right of controuling the other,
 “ it seems most reasonable that this right
 “ should reside in the major part ; besides, it
 “ is more likely that I shall, by this means,
 “ be privileged myself : it is more likely that
 “ I shall, upon any given occasion, be one
 “ of the *greater* number than that I shall be
 “ one of the *less*. It is, however, on the other
 “ hand probable, that I shall be sometimes
 “ in the minority : let me, therefore, look
 “ to my interests, considering myself in this
 “ point of view. In fact, whilst we subsist
 “ together in a state of society, I have no-
 “ thing to fear so much as the oppression of
 “ numbers : therefore, to invest them with
 “ an *unlimited* legal right of chusing for me,
 “ where I dissent from them, would be no
 “ more than to authorise that oppression
 “ which I ought to guard against. How shall
 “ I guard against it ? Thus ; by confining

* “ Neither can I expect that others will exclude
 “ themselves in my favour.”

“ the efficacy of the will of a majority with-
 “ in the principles of that Constitution to
 “ which I am about to set my hand; thus I
 “ buy up a dangerous and unlimited power;
 “ by conceding a qualified, useful right: I
 “ know the extent of the authority I am
 “ confiding; when I make one of the ma-
 “ jority I shall be privileged; and when I
 “ do not, I cannot be injured.” *

If it be inquired of me, whether a ma-
 jority have not a right to overthrow an ar-
 bitrary oppressive Government, I will an-
 swer by another question, viz. whether
 an arbitrary Government be a Constitu-
 tion, or founded on one? Or whether
 it be not rather an usurpation upon the
 rights of every individual in the nation?
 Whether, therefore, such a right in a ma-
 jority proves their right to subvert a Constitu-
 tion? And I will propose a question in my
 turn; viz. Is it in right of the majority they
 are entitled to pull down the despot; or does
 the same right exist in the minority, if they
 have the power? The Brutus who slew
 Cæsar, would tell you this right existed in

* I choose the instance of a single Government, as
 more directly illustrating the subject before us, and
 as more likely to exist in a nascent society.

individuals, and perhaps he would tell you no more than the truth.

I have been the more diffusive in treating this subject, because I would not have the tribute of veneration, which we pay to the sacred rights of nations, lavished upon the usurped privileges of majorities. A nation ever means well, and its very errors are respectable ; but I cannot persuade myself to be a warm stickler for the rights of the *many*, whilst I remember that the virtuous are the *few*. A few words will shew, that allowing the legislature to amend the Constitution (and to alter themselves, if it have this tendency) is not (when exercised within certain limits, which we shall point out) inconsistent with the principles which we have been laying down, viz. that the rights of the representative body of legislation are conferred by the Constitution ; must be exercised subordinately to it ; and imply its existence. If, by a Constitution, we understand its fundamental principles, these the legislature cannot alter ; this would be to subvert : to put an end to their own privileges, by cancelling the charter which conferred them. But if Constitution means that complicated being, made up of

I

principles

principles, and applications of those principles; of rules and corollaries; of the power of legislating; and of some laws made—then, I say, the legislature may amend this compounded machine, so long as they do not meddle with the first principles—with the moving powers. I apprehend that the indeterminate idea which we have of a Constitution, is what leads us into difficulty upon such a question as the present. To *alter* the Constitution (in its complicated sense) is to *prevent* it from being *altered* (in its more simple sense;) to *alter* the appendages may be to *fix* and *ascertain* the principles. If one of the principles of the British Constitution be, that the situation of the Commons with respect to the people be delegated and dependent, the act which shortened the duration of Parliament from life to years, fixed the Constitution in one sense, by altering it in another; the legislature measured the *practice* with the *principle*, and by cutting away the excess of the former, made them, as they should be, commensurate. Here the Government altered itself, and was warranted in doing so; here is an illustration of the extent of right which exists in the legislature to alter the Constitution. It was no principle

principle of the Constitution, that the Parliament should endure for two, three, seven, or more years ; but that its duration should be so limited, as best to secure its dependence on the people, consistently with the convenience of a permanent representation, and with dignity, virtue, and capacity in the representative body. It is a principle of the British Constitution, that the legislative power of the Crown shall consist only of a veto ; (for, as Montesquieu observes, his approving is no more than not exercising his right of negative ;) now, if the legislature enact that any bill shall originate in the King in his legislative capacity, and from him pass through the two houses of Parliament, and become a law, they are changing *principles*, which they have no right to do ; and here is an instance how far the legislature have *no* right to *alter the Constitution*. Now, if the principles of the Constitution at once confer, and set bounds to, the right of the legislative Government to alter itself ; to amend the Constitution ; will any man call this right in the legislature a *jus vagum aut incognitum* ? Will he agree with Mr. Paine, that “ the “ Government” (understanding thereby the legislature) “ cannot have the right of alter-

ing itself ; that if it had it would be arbitrary ?” Will he not say that a power of alteration, to which limits are prescribed, is not an arbitrary one ? Executive power excludes all idea of a right in it to alter itself, or any thing else, in the way of free agency ; the legislature is the *will*, and the executive power is the force of the Constitution.* I will agree with Mr. Paine, that *Government* (i. e. Legislature) stands in somewhat the same relation to *Constitution* as *judicature* to *laws* ; but he will please to recollect the *discretion* of judges ; their right of interpreting ; of bringing cases within the equity of a statute, from whose strict letter they are excluded ; of looking into the intent of the legislature that made the law ; of penetrating the darkness of expression, to get at the spirit it contains ; of preferring liberal interpretation to literal construction ; and almost straining principles, to apply them to public service : judges and legislators may indeed abuse this discretion. We have *supposed* instances of legislative, we have *seen* examples of judicial

* I call the Legislature the *will of the Constitution*, and not of the nation ; because, as I have said elsewhere, it exists in, and expires with the Constitution.

abuse. We have known it held, that the intent which is essential to crimes, is in one case matter of *fact*, and in another matter of *law*; that jurors shall find that malice which constitutes a murder, but judges that which constitutes a libel: in short, that the supposed libeller shall be denied a trial by his peers; but, if he would earn this valuable privilege, has only to commit murder. Why is this? We shall not have to look long for an answer. Here is an illustration I could wish was but imaginary; here is a doctrine, which is *illegal*, when laid down by judges; which would be *unconstitutional*, if enacted by legislators. These thoughts have led me away. To return—Judicature is an undefined somewhat, more than ministerial; so is Legislature. I fear, therefore, the instance will not answer Mr. Paine's purposes. As the law to the Sheriff, or other ministerial officer, so is the Constitution to the *mere* executive power: the share of legislation entrusted to the King of Great Britain takes something from the analogy.

Let the Legislature then retouch and strengthen the lines which have become faint

in the great chart of Constitutional principles : let them assert and put beyond controversy those privileges which the interests of kings dare to encroach on ; let them alter and amend, under the obvious and natural restrictions we prescribe ; but let the identity of the Constitution be ever preserved. Nor does this consist any more than the identity of a man, in an unalterable mass of the same particles ; but amidst alternate increase and diminution, loss and repair, the Constitution and the man continue still the same ; can still be analyzed to the same elements. Each has its organs which digest and assimilate ; its stamina of different degrees of strength ; its periods of vigour and infirmity, youth and age ; each at its birth imbibes the principles of decay : and Rome and Sparta teach us, that Constitutions must perish as well as men ; but let us not wantonly destroy them before their time : nor imitate the practice of those barbarians who butcher and devour the parent that had protected them, so soon as he is old enough to have become venerable : I speak of those sublime personages whose “ high and only “ title is man,” but whom we nickname savages !

savages !* I fear the reader will give a short yawn of acquiescence, when I tell him we have had a good deal of up-hill work ; however, having got amongst the savages, let us profit by our elevation, to take a view of Mr. Paine's " Natural Rights of Man," which are not visible from the peaceful vallies of social life ; or gentle reader, if, indeed, you be asleep, sleep on ; it is the best way of investigating this matter : trust me these natural rights of men are a true visionary subject. They are

—————" Likest hovering dreams
 " The fickle pensioners of Morpheus' train :"

However, as I am to prove them phantoms, I must, alas ! keep awake and proceed, but shall wait for you at the ivory gate.

* This custom is mentioned by Robertson in his history of America, vol. ii. p. 154. " When their
 " parents become old, or labour under any distemper,
 " they cut short their days with a violent hand, in
 " order to be relieved from the burthen of supporting
 " and tending them."—Herodotus notices the same custom as obtaining in the old world: *Επειαν δὲ γερῶν γινηται, καρῖα αἱ προσήκοντες αἱ πάντες συνελθόντες θύσσι μιν καὶ ἀλλὰ πρόβατα αἶμα αὐτῶ, ἐψήσαντες δὲ τὰ κρέα κατεσυχέονται.*
 A custom thus prevailing at such different periods, and in such different quarters of the globe, is worthy observation ; and I should recommend it to our savage philosophers to inquire, whether those philosophic savages were not perfectly justifiable in this custom, and whether it would not be expedient to revive it?

Mr. Paine's system is, " that those *natural* rights to which the power of the individual is commensurate, are retained in a social state; but that where the *power* is not commensurate to the *right*, the individual deposits this useless right in the common stock, and takes the arm of society, of which he is a part, in preference, and in addition to his own." I should rather say, (if I were to agree more fully than I do with Mr. Paine,) that of the *rights* thus deposited, with the defective *powers* accompanying each, a collective *right* is formed, attended with a *power* no longer defective, but on the contrary much more than sufficient to the redress of the injured, and punishment of the injuring individual. I should say, that the individual thus resigning his ill-matched right and power, borrows the arm of society in preference to, *but not in addition to*, his own; for I hold that the man, while considered as a *member* of society, has lost his individuality;* and that to represent him

* Here then is one *natural* right, an undoubted, and an important one, viz. right of individualness, which is so far from giving birth to any *civil* right, that all civil rights presume its loss. But this right in man to consider himself as an unconnected being, has

him redressing his own injuries, with the additional power of the community at his back, is to misunderstand the principles of social establishment. It is like representing one limb of a man redressing the injury offered to itself, and all the other limbs ready to give their assistance if it should be necessary. But Mr. Paine and I differ more widely and materially upon this subject ; let me, therefore, be permitted to offer my sentiments ; and for this purpose, once more to take a short view of his positions.

“ The *natural* rights which the *civil* man
 “ retains are all those, in which the power
 “ to execute is as perfect in the individual as
 “ the right itself: those which are not re-
 “ tained are such, in which, though the
 “ right is perfect in the individual, the
 “ power to execute is defective ; they answer
 “ not his purpose.”—Mr. Paine then stops
 to illustrate his assertion ; and proceeds to

has many subordinate rights depending on it, and which vanish with it. The civil man has no right to consider himself as an insulated individual, nor any right arising thereout. Will any man say, that the *natural* right of being unconnected, unprotected, and independent, is the foundation of the *civil* right of being connected, protected, and dependent ?

lay

lay down, 1st. that “ every civil right grows
 “ out of a natural right ;* or, in other words,
 “ is a natural right exchanged :” 2dly. that
 “ civil power is made up of the aggregate
 “ of that class of the natural rights of man
 “ which becomes defective in the individual
 “ in point of power, and answers not his
 “ purpose :” 3dly. that “ the civil power,”
 (as he has defined it) “ cannot from its na-
 “ ture be applied to invade the *natural* rights
 “ which are retained in the individual.”
 This system I mean to controvert ; and I
 beg the reader to consider the principles, and
 fix them in his mind before he proceeds :
 the third position, he will see, hangs upon the
 other two, (particularly on the second,) and
 will stand or fall with them.

I proceed to his illustration of the first part
 of his system, (viz. as to what natural rights
 are retained, and what are parted with,) which
 is as follows : “ A man by natural
 “ right, has a right to judge in his own
 “ cause ; and so far as the right of the mind
 “ is concerned, he never surrenders it.”—
 Agreed ; that he has this right to judge (i. e.

* See last Note.

to form a private opinion) in his own cause : it would, indeed, be hard to deny a man's having a right to do that which he cannot avoid doing ; or to insist upon his surrendering that, which is impossible to be surrendered.* But so far as to *judge* means to ascertain the guilt or innocence of the party judged, (and this is what we usually understand by the word,) the *civil* man is not allowed to exercise any such right ; yet, why he should surrender it, does not appear from Mr. Paine's system ; since the *power* accompanying this *right* “ is as perfect in the individual as the right itself :” the *power* of forming an opinion is as perfect as the *right* of forming one ; and when magistrates or juries give a judgement or a verdict, what do they do but form an opinion ?—Therefore, (according to Mr. Paine,) the individual *ought* not to surrender his right of judging, if he had it to surrender, or could sur-

* It is not just now material to go into the question, whether this right of judging in his own cause could exist in an individual living in a state of nature, or of consequence could be surrendered ? therefore, I shall here only hint that to *judge*, and to have a *cause* to judge in, infer the idea of injury and redress. As the reader goes on he may see the tendency of this hint.

render it : he ought, at least, to judge in his own cause, admitting he ought not to redress. Nor would this right in an individual of ascertaining the guilt or innocence of one suspected of injuring him, be an unimportant one ; or one that, if at liberty to retain, (as he would be under Mr. Paine's system,) he would willingly give up ; for if we hold, that no rights are surrendered, save when accompanied with insufficient *power* to execute ; seeing that a man's power to judge in his own cause is as complete as his right ;—ought not this right to be retained ? Ought not each individual to judge in his own cause ; and if he finds guilty, to hand over the convict to the arm of the community,* for them to inflict the penalty which the law has annexed to the crime which the individual has ascertained ?—Why is it otherwise ?—Because Mr. Paine's system is false. This disproportion between the power and the right, is not the true ground to take : the fact is, that each individual in society wished to judge in his own cause, but wished also not to be judged : these desires of individuals being placed to-

* For I will suppose himself to have a right to redress, and not a perfect power.

gether, their contradictions destroy each other, and the residue gives us *the general will*, viz. that as no man can raise himself to a judge, but by sinking himself to a culprit, none shall in their own cause judge, or be judged. The same reasons apply to the civil right of redress. “ But” (continues Mr. Paine) “ what
 “ availeth him to judge if he has not power
 “ to redress ?” It availeth him nothing I admit ; unless, as I have supposed, society will punish, when he has convicted ; but if they will, it availeth him a good deal. “ He
 “ therefore deposits *this right* in the com-
 “ mon stock, &c. &c.” Here let me observe, that Mr. Paine, who professes to go into a very strict analysis, is (according to a common phrase) *bulking* the rights of judging, and redressing, than which no two things can be more obviously distinct. However, he means to derive the right of society to judge, and to redress, (whether by punishment or restitution,) from similar rights naturally inherent in individuals. Now if man had not a *natural* right to redress,* he could not deposit such a right ; and consequently the *civil* right will not be composed of such

* We have already spoken of his right to judge.

natural rights surrendered ;* but whether a natural right to redress existed in individuals† is at least questionable, because the existence of a right to redress injury, implied the existence of injury to redress. Now if we subscribe to the opinion of no less wise a man than Locke, we shall say, that “ there can

* But if it were a previous natural right, Mr. Paine's system demands a farther inquiry, viz. whether it were accompanied with a power so insufficient, as to justify the individual in surrendering the right ?

† Whether the state of nature ever had existence, except in the minds of theorists, is also a question ; I am here admitting its existence. When Mr. Paine talks of natural rights, that he means rights in a state of nature, (so as impliedly to assert the existence of such a state,) is evident from his referring us to the Creation, (as we shall soon see,) and from his contrasted definitions of natural and civil rights ; the former of which appertain, he says, to a man in right of his existence ; the latter *in right of his being a member of society* : thus clearly calling our minds to contemplate a state when *there was no sort of society*, i. e. a state whose existence is problematic. If he states those rights to have been different from what others have stated them to be, it may only follow, that he is wrong. This part of my argument, then, has shortly this tendency, viz. to shew the existence of a state of nature to be very questionable, and that even supposing it to have had existence, yet the existence of many, nay, most of those rights which civil man hath, is, in such a state of nature questionable ; from thence I would infer the fallacy of Mr. Paine's assertion, that *every civil right has for its foundation some natural pre-existing right*. The social state is natural ; and in this sense only are civil rights, natural rights, or founded on them.

“ be

“ be no injury where there is no property ;”
but there was no property in a state of nature,—when

——“ Man walk’d with beast, joint tenant of the
“ shade.”

It is the offspring of social life ; must we not therefore conclude, that in a state of nature there was no injury ; nor of consequence any right to redress it ? I have somewhere seen it observed that the idea of *jus* must precede that of *injuria* ; the latter is only a negation of the first ; but if the man of nature has “ *un droit illimité a tout ce qui le tente et qu’il peut atteindre,*” I feel it very difficult to imagine a case, or an action which his right will not embrace. I find it hard where there is *no limit*, to say that there can be any *transgression*. The unsocial man’s *right* keeps pace with his *power* ;* and he has no right to retain the food he is about to eat, any longer than he has strength enough to withhold it : if he had, how should another have a *right* to take it from him ? What would become of the *droit illimité* ?—To take

* And this too shews the error of Mr. Paine’s system of natural rights and powers, which are disproportionate.

his food from him is to do him a *hurt* I admit, but not *an injury* ; and nature has provided, as a guard against the hurt, *plenty*, to satisfy the appetites of all ; and *pity*, to restrain the oppression of the strong.* But, even admitting the existence of injury and right of redress, in a state of nature, yet so far as this right is conversant about permanent property, as in land, &c. (and it is very principally so) it cannot be traced so high ; this property is itself a creature of social life ; and of consequence so is the right of redressing injuries which are offered to it. In a state of nature, the man who should assert this kind of exclusive, permanent property, which social life admits of, would himself be the aggressor ; and the very admission of such a claim has, therefore, been considered as putting an end to the state of nature. *Le premier qui ayant enclos un terrain s'avisa de dire ceci est à moi, et trouva des gens assez simples pour le croire, fut le vrai fondateur de la société civile : garder vous d'écouter cet imposteur ; vous êtes perdus si vous oubliez que les*

* Till the human race should have attained to that which is its maturity ; and to which it was intended it should grow. I am still admitting the existence of a state of nature.

*fruits sont à tous, and que la terre n'est à personne.**

Again, the writer whom I have just now cited, who used a strong hand to prop a tottering system, and pushed his inquiries into periods of such remote antiquity, that their very existence may be questioned ; describes the man of nature, as incapable from natural pity of doing *hurt* to any ; having no inducement thereto, *even after* having received HURT himself. Now if nature does nothing in vain, we shall consider an inquiry into the existence of a natural right, of which nature forbids the exercise, as something worse than frivolous. Nay, if we descend to times when property, law, reason, and morality, had taken place of occupancy, force, instinct, and natural pity, we shall find this right of redress in *individuals*, (so far as it consists in the punishment of the aggressor†) stifled in its birth, as well by the precept cited by Mr. Paine, of “ doing as we would be done by,” as by that which direct the forgiveness of injuries, and which is virtually included in the other.

* *Discours sur l'origine de l'inégalité parmi les hommes,*

† Which in most personal injuries must be the case.

Besides, admitting (in the face of Locke's assertion to the contrary) that in a state of nature there would be injury, and admitting, (in contradiction to Rousseau's doctrine of the omnipotence of natural pity) that the quiet of such a state would be troubled by *revenge*;—yet, if such be the wisdom of nature, that from the inutility of a right, we may argue its non-existence; let us consider what good purpose the right of punishment, (beyond that degree of it which is included in effectual resistance,) residing in scattered individuals, would answer. It would not conduce to the preservation of the individual; for he has either escaped the injury by resistance, or it is done and remediless. As to his deterring the aggressor from injuring others, (even supposing such punishment to have this effect,) that is the consideration of *civil* man; and is not to enter into our thoughts while we are contemplating him unconnected, and insulated; while we are investigating the “*Rights of Man.*” But has the sufferer a right to gratify his revenge?—Religion says not;—at all events it is a dangerous passion whereon to found a right. Besides, the other possibly aggressed to gratify his revenge: here is a right opposed

fed to right. Again, right cannot survive the total extinction of power.* In a state of nature they are one ; in a civil state, right is frequently less extensive than power ; but can never be more extensive.† When a man is murdered, his right of redress is extinguished with the power, and the man. Here is a case, in which individuals having no right of redress, could surrender none : then, when society punishes the murderer, they cannot act in virtue of any such surrender. Redress the individual could have none, consequently no right ; (indeed in this case we must agree with Mr. Paine, that his *power* was very defective :) and as to the effect which the punishment of the murderer would have, in preventing a repetition of the crime upon others, this, as I have said before, is

* If by any extraordinary chance, the reader has gone through this pamphlet page after page to the passage before him, I may, in virtue of a sort of intinacy, trifle with his good sense for two minutes, no more. I have said *right* cannot survive *power* : then has not a man shut up in the Bastille by the arbitrary command of a despot, a *right* to get out ? Ask the question of a plain man, and what is the answer ? “ Yes : IF he can,” i. e. his right is conditional.

† Those civil rights of giving redress, &c. which exceed the power in individuals, do not in fact exist in those individuals, but in the community ; and are there accompanied with power commensurate.

foreign from the interests of the *individual*; it is the consideration of civil society, and is to be looked for no higher. But the children of the murdered man have a right to redress?—No such thing: they belong to *another generation*.

If the right of punishing in society, was no more than the aggregate of rights of redress in individuals, the former would have no right to punish, except where the latter had a right to redress. The *general will*, we have seen, is not an aggregate of individual wills; is not the *will of all*; but is extracted from it: in like manner, civil power is not an aggregate of, but an extract from individual power; and it is vain to search for the strength and spirit of the extract, amongst the inactive particles from whence it was obtained. In short, consider the matter as we may, we shall still, in society, behold a moral being, the parent of many rights, which it is, therefore, fruitless to look for in a period anterior to the birth of society itself.

In these subtleties are we entangled when we would trace matters too high. I stand in need of an excuse for the fatigue I have given

given my reader ; and Mr. Paine shall furnish me with one : “ The error,” says he, “ of those who reason by precedents drawn from antiquity respecting the Rights of Man, is that they do not go *far enough* into antiquity ; they do not go the whole way :” (alas ! I hope I have gone the whole way ; for my companions and I are heartily weary of our journey :) “ they stop in some of the intermediate stages of an hundred or a *thousand* years :” (a thousand years is a long stage, Mr. Paine ; and the roads are intricate and very heavy ; and the light failing us ; at least you should suffer one to stop and feed ;) “ but if we proceed on, we shall at last come out right : we shall come to the time when *man* came from the hand of his Maker. What was he then ? Man.”

Now I am strongly tempted to believe that Mr. Paine thinks he is sending us on a journey of more than six thousand years. But if he only means that we should take a trip to the common æra of creation ; I am afraid it is not so clear that we shall “ come out right at last ;” if it be *man in a state of na-*

ture, that we are in search of :* *Il n'est pas même venu dans l'esprit de la plupart des nôtres de douter que l'état de nature eût existé, tandis qu'il est évident, par la lecture des livres sacrés, que le premier homme ayant reçu immédiatement de Dieu des lumières et des préceptes, n'étoit point lui-même dans cet état, et qu'en ajoutant aux écrits de Moïse la foi que leur doit tout philosophe chrétien, il faut nier que, même avant le déluge, les hommes se soient jamais trouvés dans le pur état de nature, &c.* † So that we see the man who will never stop till he gets to man in a state of nature, so as to investigate his natural rights, must leave his religion behind him on the way. Having then a *civil* right, and one of great importance (the right of punishing) which does not grow out of any *natural* right ; but is a new acquisition derived from the social compact ; and

* Therefore, while I have hitherto acquiesced in the expression of *natural right*, it has been because it was not necessary to analyse its meaning farther, than seeing that it meant certain rights not existing in a state of perfect civilized society ; and thus I used it in p. 12. The ancestor there mentioned was not in a *state of nature* ; but he was in a different state, and in possession of different rights, from his more civilized descendent ; and to those savage rights his descendent might be remitted.

† Discours sur l'Origine, &c.

pur-

purchased by the civil man at the expence of his individuality ; we seem warranted in denying the general truth of Mr. Paine's first assertion, " that every civil right grows " out of a natural right ; or, in other words, " is a natural right exchanged."—At least the *civil* right of redress has so entwined itself with right of property, and other civil establishments ; has become so luxuriant in the soil of cultivated life, that we shall scarce recognize its affinity to this wild right which Mr. Paine tells us is of the same genus.

If uncivilized man* has a right to provide for his wants, and minister to his comforts, so long as he does nothing injurious to the rights of others, † I can with difficulty derive

* I use the word *uncivilized*, because we know of no state of nature in its strict sense, and because if such a state did exist, the Rights of Man in it would not have the limits which Mr. Paine here prescribes to them, (viz. that they must not be *injurious* to others,) but, would be bounded only by the power of the individual.

† Observe, that when Mr. Paine speaks of natural rights, he must at least mean rights which are *not* civil ones : he must at least have in view a state previous to society, and when *injuries*, not being defined by law, the individual about to do the act would himself have to judge whether it would be injurious ; i. e. hurtful. Would he ever determine that by building
his

rive from any right which then had existence, the civil right which the owner of some thousand acres has to an action of trespass against the wretch, who, without permission, builds his hut in some angle of this demesne, and appropriates a rood of it to the cultivation of a few roots for his subsistence : nor can I conceive, in virtue of what other than a mere civil right it is, that the owner of thousands indicts me capitally, if I take from his person a few guineas, though I take them without force. The right of redress is about nothing more conversant than permanent property ; then let us not derive it (nor of consequence civil rights in general) from a period anterior to the establishment of laws and right of property.—But if we consider this right of redress to have lain dormant in *individuals*, so far as it relates to property, till new-invented wrongs should call it forth ; if we attribute to it an expansive principle, enabling it to embrace every injury as it arises ; we represent the wisdom of nature supplying right of redress as fast as the caprice of man imagines

his hut, &c. as I have supposed, he was transgressing the limits of natural right—he was doing any thing injurious to the rights of others ?

injury.

injury.—No: the right of judging, and of punishing is, with reference to all rights which social life has produced, (and there are many such, for instance, right of property) merely a civil right; and even when conversant about personal injuries, is not the mere result of *unsocial*, individual right of resistance; but is something more; deriving its existence, at least in part, from civil life; and (to descend from those metaphysic heights, where, I confess, the atmosphere is much too thin for my intellectual organs) let me satisfy my cravings with that plain substantial fare which common sense affords me; and rejecting the unsolid doctrine of a man's not judging in his own cause, because his power of redress is disproportioned to his right, let me lay down, that the passions and prejudices of individuals render them unfit judges in their own cause: that to ascertain whether there be any right to redress, it should be inquired, whether any injury hath been sustained; and that this inquiry may as well be made by another as by the complainant himself. The threats of an individual will be effectual to prevent injury, or otherwise, in proportion to the strength of him who threatens, and at most will only divert the injury from himself

to

to one less capable of resistance ; but the threats of united millions (for so the criminal law of a great nation may be called) must *ever* excite terror in the individual against whom they are directed. The sword of public justice is continually held over the head of all ; but the poignard of individual vengeance is seen only in the moment that it strikes ; public punishment is prevention—private punishment is revenge : the one is dictated by disinterested justice—the other prompted by prejudiced malignity. Let us not erect this civil right on so infirm a basis ; let us rather say, if we travel beyond social life at all, that the individual right of resistance helped to produce the social right of punishment, which is an uniformly and necessarily effectual resistance,* sometimes applying to injuries *merely civil*. I say, then, it is not true that “ every “ civil right grows out of a natural right ;” but on the contrary, I see the two frequently incompatible.

Mr. Paine’s two other assertions are immaterial, if the first be ill-founded ; therefore, whether or not I have refuted the first, it is equally needless that I should apply myself to them ; and I shall only add, that where

* And something more.

a man, who (in virtue of his natural right of acting, as an individual, for his own comfort and happiness, “ in cases not injurious “ to the *natural* rights of others,”) commits a forgery, that takes from the bank a little money, which it can well spare, and he very much wants ; where, I say, this man is hanged, methinks I behold “ the civil power “ applied to invade the natural rights retained “ in the individual, and in which the power “ to execute is as perfect as the right itself.” That the man had a *natural* right to supply his wants with this money cannot be denied, if we admit the right of property to be a mere *civil* right : that his power to execute was not defective, appears from his success : and that he had not surrendered this right, follows from Mr. Paine’s own system, that “ those “ natural rights are retained, in which the “ power to execute is as perfect in the individual as the right itself.” Why hang him ? But Mr. Paine would not hang him. Well, he would punish him in some way ; and this answers my purpose.

I have now done with Mr. Paine’s metaphysico-natural Rights of Man : probably the reader did not want my assistance to put

them to flight ; like the Grecian shades, on Æneas's approach, they shrink before the gleam of truth, and firm step of substantial reason.

Ut videre virum, fulgentiaque arma per umbras,
Ingenti trepidare metu—

—Pars tollere vocem

Exiguam ; inceptus clamor frustratur hiantes,

It may be added, that metaphysics, as well as ghosts, are sometimes safe, by being *immaterial*.

If any are disgusted with those abstract discussions, let them reflect, that Mr. Paine presents us with the *principles* which I have been combating, as an unerring standard whereby to regulate our daily practice. He lays them down early in his pamphlet, and impliedly admits them to be necessary to the support of those inferences which follow : I have, therefore, worked at the foundation ; if successfully, the edifice falls of course ; but even though I should have only rendered the basis unsure, men will beware how they raise a system upon it, especially if the system be hostile to the general quiet.

Paris, it is true, is built on caverns ; and the magnitude of the city, and stateliness of the buildings, is in proportion to the weakness

ness and hollowness of the ground they stand on ; * but I have no where said that Paris is a fit model for our imitation.

Mr. Paine has, “ by way of relieving the “ fatigue of argument,” favoured us with one or two pleasant tales : let me be permitted, from the same motive, to present the reader with a fable. It shall not be that of Menenius Agrippa, which answered very well for those unenlightened periods, and for so frivolous a people as the Romans, but is not adapted to the age of Philosophy and Rights of Men.

In I know not what century, (the reader can look into Blair’s Chronology) but it was after the flood, a spirit of tumult and philosophy is said to have moved upon the face of the waters. Rivers, which had been running quietly within their banks for ages, (through mere want of reflection) now first discovered that they were in such a state of depravity, as made it necessary to recur to first principles ; and rights of waters were making a rapid progress through the globe,

* Tableau de Paris.

It was argued, that this confinement within banks was a restraint they had imposed upon themselves, contrary to the bountiful intentions of nature. They were created fountains, with equal natural rights, and deemed it expedient for the purposes of investigation, to go back to their sources : nor could they see why some particles of water should be oppressed, and impelled, by others no better than themselves : their forerunners, it is true, had been submitting to the same coercion time out of mind ; but what was this to them ? The rights of living waters were not to be thus controuled and sported away : as to divisions of water into springs, lakes, rivers, &c. these they rejected as mere civil distinctions ; and pushed their researches to that time when water came from the hands of its Maker : what was it then ?—Water : water was its high and only title.* From this æra they derived their rights. Now a rumour went, that in the time of Noah, a great aquatic revolution had taken place, and

* “ If we proceed on, we shall at last come out right : we shall come to the time when man came from the hand of his Maker. What was he then ? *Man* ; *Man* was his high and only title.”

PAINE'S PAMPHLET.

reduced all things to a philosophic level ; in this state of affairs then it was resolved by the rivers, that they would be imprisoned within banks no longer ; nor be driven headlong in one direction at the arbitrary will of their fountains ; but would shed their last drop in asserting the indefeasible rights of waters. The *Nile*, a river of obscure origin, and (as it is not unusual with that class,) always remarkable for its ungovernable temper, and levelling principles, led the way ; and Egypt was covered with an inundation. Every cultivated inequality was overwhelmed ; and all distinctions levelled : nature was supposed to have resumed her rights ; and philosophy contemplated with satisfaction all the grand simplicity of ruin ; when lo ! the tide of tumult began to ebb : eminences were seen to get their heads above water ; the party continued to gain ground ; and all things tended to a counter revolution : the Nile retired imperceptibly within its channel ; leaving the country oppressed with luxuries, and swarming with monsters, the rank and corrupt produce of this watery revolution.

Mr. Paine having given us his system of the natural rights of man : having, to use
his

his own expressions, “ in a few words traced
 “ man from a natural individual to a mem-
 “ ber of society,” proceeds to follow up his
 principles by practical inference ; and I at-
 tend him. *Titles* are with him objects of
 great contempt and ridicule : in truth, if a
 peer be a distinct being from a man (as per-
 haps is sometimes the case,) I should be
 glad, if possible, to exalt him into one ; but
 even though I were to consider him as no
 better than a gaudy variety, I should let him
 stay as he is : though I should look on him
 as “ immured within the Bastille of a word,”
 yet I might doubt whether it would contri-
 bute to his happiness to release him. I have
 read of a man, who being suddenly delivered
 from a long confinement, pined till he was
 re-immured : I really do not feel convinced
 that a lord “ furveys at a distance the *envied*
 “ state of man.”—We smile with Mr. Paine
 at the silly display of the “ fine blue ribbon,”
 and the “ new garter ;” and think the pos-
 sessors no better than girls ; yet when we
 turn to the Roman Laticlave, and Prætexta,
 &c. we grow as serious as if one thing were
 not as ludicrous as the other : we know the
 Romans were a manly people ; we see George
 Washington (the only Roman now living,
 that

that I know of) wearing the insignia of an order, which may, perhaps, have chosen a blue ribbon for its badge. We behold in the patrician order a “ Corporation of Aristocracy,” yet are not disgusted :* nay, we say that freedom, long languishing, expired with *Pompey* ; though his adherents were the nobility, whilst *Cæsar* made good his party with the national guards : and was all for Liberty and Rights of Men.

Neque præda meis, neque regnum quæritur armis ;
Detrahimus dominos urbi servire paratæ.

Such is part of his address to the soldiery : one of whom in reply, thus gives vent to the ardent spirit of freedom with which he is animated :

Pectore si fratris gladium, juguloque parentis
Condere me jubeas, plenæque in viscere partu
Conjugis ; invitâ, peragam tamen omnia, dextrâ :
Si spoliare Deos, &c.

These were noble sentiments ! unlike the servile notions of *Brutus*, that paltry adhe-

* Isocrates used to call the Athenian democracy an aristocracy ; and this he meant as a compliment !

rent to aristocracy, who was proud to be called the hope of the Senate : *O decus imperii ! spes ó suprema senatús !*

What was the true æra of democratic government in Rome ?—the establishment of the tribunes : Yet did its democratic origin prevent this title from exalting in the end the dignity of a despot ; and rendering more hopeless the oppression of the people by making sacred and inviolable the person of their tyrant ? The unassuming patriotism of Tiberius was content with the *Tribunitia Potestas* :—how we suffer ourselves to be imposed upon by names !

Is it with the name of Lord that Mr. Paine is dissatisfied ; or with that inequality which it announces ? Is he a caviller, or a leveller ?*

He

* Far be it from me to impute to Mr. Paine that he is no caviller : I discover many trifling observations and cavilling objections carried along the surface of his headlong doctrine. For instance, when he is shocked at the expression “ my Parliament ” used by the King of Great Britain ; or at the application made to the Crown, at the opening of Parliament, to allow the members liberty of speech ; when he talks of the beginnings of the House of Commons, that it was a boon, &c. We well know that Parliament is not the property of the King, that to apply for freedom of
speech

He is a leveller ; and his doctrines are not new but obsolete : they were the doctrines of Cromwell's time. Lucan tells us that pieces of armour, which the violence of the winds in Africa tore from soldiers on their march, fell in remote countries, and were there supposed to have dropped from the skies. Mr. Paine's principles were raised by the civil tempests in England, and we are now to venerate them as Heaven-sent.

Delapsaque cœlo

Arma timent gentes ; hominumque crepta lacertis
A superis demissa putant.

But he would not have hereditary legislators : I might infer that he would not have the Crown of England hereditary ; for the King is a legislator : but Mr. Paine's turbulence is so express, that he does not put us to the trouble of much implication : then I have just to say that Montesquieu differs from him ; and says, that the nobles ought to

speech is mere form : and that the House of Commons is not at present a boon from the Crown. The King calls himself King of France too : Mr. Paine ought not to have forgotten this. The French ought without delay to wipe away this badge of subjection, cost what blood it may.

form a distinct branch of legislature ; and that the body of the nobility ought to be hereditary.* Yet of Montesquieu Mr. Paine makes honourable mention : he says, indeed, that his “ mind often appears under a veil ; and we “ ought to give him credit for more than “ he has expressed :” perhaps, therefore, when Montesquieu says, that nobles ought to legislate apart from the people, he means, that they should be confounded with them ; and when he says, that the body of the nobility ought to be hereditary, he means that it ought not. If we speak of the mischiefs of aristocracy, we usually mean an executive aristocracy ; which our House of Peers is not : the claims of ambition are bought up by the State ; which says—thus far you shall be distinguished, provided you seek no farther distinction.—Is not property to be hereditary and alienable in France ? Is not here an inevitable source of inequality, accompanied with a certain degree of permanency ? And what is rank else ? for names make no difference. Indeed, I grant it is unreasonable that any man should *dispose* of his property by *will*, under Mr. Paine’s system ; that

* *Esprit des Loix*, liv. xi. chap. vi.

“ every age is free to act for itself *in all*
 “ *cases* ;” and that “ the vanity and presump-
 “ tion of governing beyond the grave, is the
 “ most ridiculous and insolent of all tyran-
 “ nies ;” but so the case is : and if French
 theory and practice be at variance, it is not
 for me to reconcile them. Inequality is the
 work of progressive nature ;* and civil rank
 is built upon it ; the aim of this latter is to
 give a direction and a permanency to the for-
 mer, which may prevent the disorders it tends
 to produce : it leaves pre-eminence attainable,
 but when attained, secures it from the tu-
 multuous attacks of grudging envy. Nature
 leads to the unequal division of property ; un-
 satisfied covetousness would have the change
 as rapid as its own desires ; but law says, it
 shall be so gradual as to be peaceable. In
 natural inequality we behold the unsteady
 swell and fluctuation of a sea ; in civil rank,
 the irregular surface of an improved country.
 That is natural, (I repeat it) to which nature
 tends ; and if I speak of a state of nature, I

* And thus let me be understood when I speak of
natural inequality, &c. &c. I mean *in general* that
 state to which nature tends ; or *more particularly*, that
 which is contrasted with a state of fixed, steady, social
 union, cemented by certain known institutions.

only mean something contrasted with that strict social union, which is cemented by positive known institutions. That the pure state of nature ever existed is more than questionable ; that it should continue, is as monstrous, as that a child should never grow from the moment of its birth. Savage life is the infancy of the human species, and civilization its maturity. “ When I was a
 “ child, I thought as a child ; but when I
 “ became a man, I put away childish things.” Mr. Paine cites this observation, and ought to have remembered it.

So soon as it became necessary that the labour of one should procure subsistence for more than himself, property and mutual dependence began ; and all things tended to an inequality, whose *excess* would be exorbitant power and wealth, and abject want and slavery ; evils that would require and produce violent efforts to cure them ; and the tendency being permanent, these fevers would be periodical : therefore, had nature done no more than give to human affairs this bias to inequality, men would only spring up for mutual destruction ; but it was corrected by another tendency, viz. to social regulations—

to durable establishments. The end of these is to balance that inequality, which is the work of nature, by establishing an equality—which is the work of convention. The equality of savage man is the chaos of the species *. A regulated and subordinate inequality is the fair creation, which nature, working with human passions, and human reason, has produced. Social establishments were the consequence of inequality, and not inequality the effect of these. The latter were meant to check the excess of a natural tendency ; and stop it short of affecting things material to men's happiness. They drew a circle round the life, the freedom, the property, and most substantial comforts of men,

* Admitting an *unsocial* state.—But in the moment we look upon man as *social*, we see him dependent ; and with dependence inequality is nearly connected ; for to render men equal, it is not sufficient that they be *mutually*, unless they be also *equally* dependent on each other ; but this is inconsistent with the nature of man : the dependence on each other will be proportioned to the different degrees of the wants, strength, talents &c. of them respectively ; which being unequal, so will be their mutual dependence. Let us beware too, how we confound the social state, which is congenial to man, with the social establishments which belong to it ; they are nearly connected ; but they are distinguishable. Establishments belong to the more advanced stage of social life. Instinct leads to social *union* ; reason, reflection, and experience, to social *establishments*.

and

and said, in these shall all men be equal. They lifted law to a height whence Rank is indistinguishable ; and the social scene is but as one vast cultivated level ; and herein consists the true moral, social equality.

But the levelling system reminds me of having seen phials, filled with dusts of different specific gravities : the experimental philosopher shakes the bottle ; produces the revolution ; and then leaves nature, with some trouble, to settle the commotion. It is by degrees settled ; and the particles rise and subside into their respective places. The leveller does that upon reflection, which the passions of men would produce for want of it. His glory is to bring about the very evil, which society was meant to cure. The equality he produces can be but of short duration : the natural spring flies back with violence, when the mild but steady restraint of civil regulation is removed : nay, properly speaking, the leveller does not produce equality ; he exchanges permanence for fluctuation ; civil rank for natural inequality.—So far as civil rank is but a name, it is idle to cavil about it ; so far as it is a *reality*, it is no new creation : it is the ascertaining a natural inequality ;

equality ; a distinction which is of the essence of man. Whatever leads to natural inequality, should lead to civil rank ; and all institutions should pre-suppose this tendency, and work upon it as their grand material. Nature must furnish the qualification, by which rank shall be claimed ; let it be the task of education to cherish, and bring forward virtue for this purpose ; but as inequality there must be, and as virtue is but rare, the institutions which hold society firmly together, (by satisfying with rank nature's craving for inequality,) must hold out rank to wealth—talents—ambition, if they would keep the natural tendency within bounds. They must purchase unbounded dominion with limited distinction.

The general truth, that nature tends to inequality, restraining, however, this bias by the tendency of human reason to regulated establishments—I say, this general truth may be detailed through particulars : thus the mass of national property has a tendency to break into fragments of unequal magnitude, falling to the lot of different possessors ; and this it is which renders virtue so necessary to a democracy : in this unequal division of property,

perty, and in the rareness of virtue, are we to look for the mischiefs of popular government. If those who possess the smaller portion of national riches, equal in number those who possess the larger share, the democratic government (if virtue be wanting) will be factious and turbulent; if they exceed them, it will be tyrannical. But the poor do naturally exceed the rich, for many reasons: uncommon circumstances, and extraordinary talents, (whose epithet confines them to the few) help individuals to acquire exclusive property; and he who is fond to acquire, will be apt to preserve—besides that the acquisition of some assists the possessor to acquire more; masses of wealth having a power of attraction proportioned to their bulk: and so the inequality of wealth has a tendency to increase, which requires all the aid of folly, vanity, and prodigality, to counteract it.

Thus one destructive passion is checked by another, no less destructive; till at length luxury and avarice join hands (and now-a-days assume the shape of philosophers,) to destroy that Constitution, which we have confessed is mortal as inevitably as man.

We

We have seen that the unequal division of property is natural and necessary ; i. e. that of the mass of national wealth, (if the people be left free to alienate and acquire,) *the few* will possess more than would be their proportion, if that wealth were perpetually divided, as it accumulated into equal parts, according to the numbers of the people ; and that each citizen had a right to one of these parts *. To prove that man is fond of acquiring would be tedious and unnecessary ; but we may observe, that the circumstance of his acquisitions distinguishing him from the many, will heighten this fondness, till it would amount to an excess requiring restraint. Let us apply these reflections to the consideration of simple governments—for instance, of a pure democracy. It is a government of the people ; that is, of the majority of the people : that is, (in all cases where the interests of avaricious wealth, and covetous poverty,† are opposed,) of the poor, or if you please, of the least rich : the wealth of the few excites the wishes of the many ; with their wishes their power keeps pace : the wealthy are pillaged ;

* The same inequality of property is natural to nations as well as to individuals.

† By which I do not mean *Want*.

and if the more active rapacity of a few of these legal plunderers enables them, in the first instance, to apply the booty exclusively to themselves, the motive for fresh pillage revives on the instant ; but suppose the best, that the *immediate* consequence of this plunder is equal distribution, still the calm is but temporary, is but short : the permanent principles of nature continue to operate, and by degrees re-produce the inequality which was thus violently destroyed ; the motive arises afresh, and is followed by fresh destruction ; and thus for ever, the machine revolves, presenting us alternately with the motive and the mischief. The evils of an unqualified democracy as nearly resemble those of a no-government, as can well be imagined ; for if the many have virtue sufficient to resist the temptation, which the effect of natural inequality offers to them in the superior riches of the few, they need no government, legitimate government being the remedy, which reason applies to the ill effects of vicious passions ; but if on the other hand, virtue be wanting, what becomes of that democracy, of which it is confessedly the vital spirit ? What are the mischiefs it produces ? Precisely those of the no-government, viz. the

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tumultuous oppression which arises from a coincidence of indigence and power. From the very circumstance of this incessant and turbulent fluctuation, incident to a simple democracy, operated upon by human passions, may have arisen the more complicated forms of government. Tumults so frequent, in the horrors they produced, involved the experience which should remedy them: a man was able, even in the course of his own life, to observe himself alternately the plunderer, and the object of plunder, and to find that rapine working one way, and nature another, produced fugitive wealth, and permanent discord.

Mr. Paine seems to understand the public interest to be only a simple mode, formed by the addition of individual interests. The fact, we have seen, is much otherwise: the interests of individuals, when in mutual opposition, as often happens, cannot be added together, but destroy each other; they do not give a sum, but a product; but it is little matter how we define public interest, so long as we do not confound the interests of men with their wishes: the most important of the interests of an individual is to be protected from the peril to which his own ungoverned

wishes, and the contrariant interests of others expose him.

But, whilst we contemplate a democracy, we cannot overlook its giant offspring, the Demagogues. In the birth of these, nature loudly warns us, if we attend to her voice, that the idea of equality amongst men, (in the sense in which it is commonly taken,) is absurd, because it is impracticable. Let us contrast a Demagogue with a King ; holding the English form of Government principally in our mind. The duration and extent of a Demagogue's power is uncertain—the authority of a King defined, and for life : hence a temptation to the former, to use ill means for enlarging his dominion, from which the latter is free. In a Demagogue are embodied the occasional will of a multitude, and the interests and caprice of himself—in the person of a King* is represented the permanent will of a people ; their permanent good sense, separated from those temporary prejudices and passions, to which they are liable—He represents what they confess ought to be their will, and shall be their law. The De-

* In his capacity of first executive Magistrate.

magogue speaks the wishes of a majority—the King the will of an entire people ; [for the laws of a well-constituted Government are, either the unanimous voice of a whole nation, concurring in an establishment for their common and acknowledged benefit ; or they are the terms of a solemn compromise, entered into by contrariant interests, and ratified and promulgated by a third power, in the person of a King : an arbitrator who is not wholly disinterested, (for then he might be indifferent,) but whose interest is to balance the opposed interests of the nation ; to keep them entire, distinct, yet consistent.*] The King repeats the steady voice of the law, the multitude echo the variable will of the Demagogue †; he wields their dreadful caprice, and hurls it at whatever opposes his own

* This is the interest of a limited Monarch, under a well and strictly regulated Constitution ; for in such, the hope of growing to a despot will be so feeble, and the fear of incurring the penalties of a *constructive abdication* will be so strong, that the limited Monarch can find no interest on so weak a hope ; whereas in his fear he will find a very substantial ground, whereon to raise a private interest, which will be consistent with the principles of the Constitution, and the welfare of the people.

† This is the fact, the Demagogue deludes the multitude into bestowing on him their power, to enforce his own will.

interests.

interests. The multitude is the unenlightened part of the nation ; and the multitude is the tool of the Demagogue. The King is the minister of the law,* the law is principally the work of the people ; and thus is the King dependent on his people, but not on their capricious pleasure : for they too are bound by the law which binds their Monarch ; and in opposition to their caprice is he bound to act conformably to that law. He is a principal trustee of their liberties—he is not their servant. How different is the subserviency of a Demagogue ! he is a favourite, and like all of that intriguing class, to become a master, he is content to be a slave : such are the advantages of a simple Government, such are the blessings of a pure democracy ! *Speciosa verbis, re inania, aut subdola : quantoque majore libertatis imagine legebantur, tanto eruptura ad infensus servitium.*†

Mr. Paine has frequently used the word Constitution in his book, and so have I in mine. No thinking man but must feel that

* When made.

† Tacit. Annal. lib. i.

the idea which this name excites, is not so neatly and accurately defined as he could wish it ; but now when my reader sees himself within a few pages of that right hand cover of my pamphlet, to arrive at which he has been so long languishing, it is no time to detain him with long discussions. I shall say a very few words.

I am far from agreeing with Mr. Paine, that a Constitution *must* be *actually* antecedent to a Government : that to give it existence, there must be a *single positive* act, done at one determinate time, constituting such Constitution ; and that “ wherever it cannot be “ produced in a visible form, there is none.” No such thing ; the Constitution, *gradually* settled, is still *by relation*, antecedent to the Government, (which I admit to be its creature :) and each accumulation of improvement, each advance to perfection in that Constitution, is still referred back to a period, whether actual or supposed, of original establishment ; and asserts a title paramount to that of Government. For I give to the living generation the right of altering and improving, which their advocate Mr. Paine would deny them, and would in return be-
flow

flow on them the dangerous privilege of demolition : a Constitution, like the nation which takes benefit from it, is a permanent being, composed of fugitive and successive parts, or rather, it is a gem which the wisdom of each successive age has been employed to polish, till it attains a lustre which would astonish those who dug it from the mine.

The progress from savage life to citizenship is through a long course of gradual cultivation. As far as observation or tradition informs us, the savage has been improved into the citizen by an accidental intercourse with polished men ; yet even here, though the model of a high degree of improvement is before him, his progress is but slow ; and therefore Mr. Mitford observes in his excellent History of Greece, (which is the work of a Philosopher) “ that the accounts which
 “ refer their foundation of the principal cities
 “ of Greece to particular æras, and parti-
 “ cular persons, mark them for colonies ;”
 for he adds, “ towns are not usually at once
 “ built, and a new state formed by the na-
 “ tives of a country : in the more common
 “ course of things they grow so imper-
 “ ceptibly, that not a rumour of their origin
 “ can

“ can remain.” Still, however, the mind travelling on in inquiry, finds that there must at some period, in some place, have been *original* civilization, unborrowed from the models held forth by polished emigrants feasting themselves in the neighbourhood of barbarians : and that this original civilization must have been incomparably flower, is an obvious conclusion ; a less immediate conclusion will be, that civilization is natural to man.

At first, then, there arose an imperfect society, founded on individual wants, and a blind consciousness that an union obtained by mutual concessions would remove them : but the nature and extent of the concessions being by no means ascertained, the social mass ill cemented, broke to pieces with every shock of intestine tumult*. The conveniences of society were however tasted long enough to be relished ; and means were therefore sought to cement the union more compactly : this was effected gradually, and in its completion we

* This early stage of society is one of the most favourable to virtuous enterprize : the age of imperfect civility is the age of heroism : the weakness of the social structure requires to be propped by a Hercules, a Theseus, or a Gothic Paladine.

behold perfect civilization, and a Constitution which may be said to be an ascertaining precisely the nature and rights of that transformed being, who, from an* independent individual, has become member of a particular society:

The despotism of one has seldom, I believe, arisen at once out of the rudiments of society. A feeble and ill-united military aristocracy, dimly seen, (when not totally obscured) in the fog and darkness of armed violence; and needing every aid that superstition could afford to point the mischiefs of an explosion, which neither priests nor leaders could prevent; this I rather take to form the character of those early Governments; and the pre-eminence to which successful prowess, displayed in times of common danger, raises one captain above his fellows, invests him with an infirm, precarious authority, very distinct from despotism. The sentiments of Homer (who lived one of the nearest to such periods as we are inquiring about) in favour of the dominion of ONE, shew the danger to which those rude Govern-

* Comparatively so.

ments were thought to be most exposed. Neither are we to look for despotism in the particular authority of a chieftain over his proper clan. Followers, not subjects, these haughty barbarians scorned to be the objects of an oppression, of which they gladly became the instruments ; and the tyrannic appetites of their leader were forced to glut themselves on the plunder of a weaker tribe : if this tribe were of their own nation, it would prove no more than that disunion which we have said to be inherent in all Nascent Governments ; and to the cure of which evil, as it affected a particular people, the immortal poem to which we have been just alluding, is, I think, said to have been very principally directed.

Families swell to tribes, these to nations ; but those latter great collective bodies do not at once find that point of reference which had given to each family, and must give to each nation, its unity. The antient pictures of Greece, Italy, Germany, Gaul, and Britain, present us with detached groups of barbarians ; who, though from their being included within some common boundaries of sea, mountains, or great rivers, they might

be looked on by their invaders as forming one people ; (yet these too knew how to avail themselves of their divisions towards subduing them all) considered themselves as distinct and separate. We find the ancient Germans occasionally embodied as one people ; and again, when the danger which had united them was past, crumbling once more into their scattered tribes. Still, however, a common danger long and uninterruptedly impending, (or else a total conquest would in another way produce the like effect) added to a certain singleness and distinctness of territory which is the work of nature ; these, joined with other causes, furthered by a multitude of accidents, and admitting of a variety of exceptions, gradually blended men thoroughly into those great masses which we call nations : mean while, (to return to our infant Governments) ere the fermentation had subsided, which was to blend a thousand tribes into one people, the reciprocal jealousies of the chiefs amongst themselves, added to (and not unconnected with) their fears from the untamed spirit of their respective retainers, removed far from those rude societies all fear of single tyranny ; the liberties of men were better secured than ascer-

tained ;

tained ; and mutual awe supplied the place of mutual compromise. Still were things far from that union which we now behold ; till the country, falling a prey to the discipline of an already civilized, united nation, the conquered natives found a cement in their slavery, while gradually lost and incorporated with their masters, they caught from them the rich tinge of complete social union ; or till (for history furnishes both examples) the warlike spirit leading through danger and conquest to peace and security, was extinguished by degrees, and the nation became enervate and united : then industry and the fine arts, sheltered and sustained by luxury, wealth, leisure, and taste, grew and flourished ; the proud ruins of a Gothic pile of Government, half hid amongst the blooming produce of latter times, decorated the landscape of cultivated life ; whilst the hut of the peasant, reared against its walls, testified the protection it was yet capable of affording. The tumultuous flocks of an armed multitude now settled into the orderly efforts of an united people : the military spirit took refuge in the armies ; and personal valour mellowed into discipline. Yet in this inevitable separation of a citizen and
foldier,

foldier, do we perhaps behold the first seeds of despotism waiting only to be impregnated by the luxury of later times, to give birth to a monster, waving his hundred arms for the destruction of mankind. Mean time, out of the necessities of the State insensibly grew the Majesty of that people which supplied them; a representative body served to center and give it permanence: their privileges kept pace with the increasing dignity of their constituents; **AND THE ESPRIT DE CORPS WAS EXTRACTED FROM THE INTERESTS OF THE PEOPLE:** the scale of subordination began to be clearly marked, and the rights of different orders in the State to be distinguished; ambition attempted to confound them, and they were ascertained.

I will not attempt to accompany a Constitution in its decline; suffice it to repeat, that despotism seems a disease usually attacking the infirmity of an aged Constitution. This was notoriously the case of France; this was the case of ancient Rome. A Government, originally constitutional, abuses its powers; and despotism is the crisis of that abuse. How long that crisis may be kept off depends on the stamina of the Constitution;

tution : a cachexy promises a premature old age. The exertions of despotism are a sort of convulsive spasms, which are soon succeeded by total anarchy and weakness, and the dissolution of the Government.

To conclude ; Let the warmth of Mr. Paine's enthusiasm hatch a Constitution, engendered in civil broils, and which is to expire in the moment it bursts the shell. We'll none of it. Our task shall be to study, and to enjoy the principles of our excellent Constitution, to disentangle from them what are no more than abuses, and to correct these latter by them.

If any thing so unlikely were to happen, as that a certain number of corrupt boroughs should be the mediate and silent electors of a peer ; and if by a strange juggle we should, in the commoners returned by those boroughs, and professing to represent them, in fact, behold the delegates of this new peer ; we should say, thank Heaven this is no more than an abuse ! for there is no such principle in the British Constitution, as that boroughs should return peers to Parliament ; or that the House of Commons should re-
present

present the House of Peers ! Again, if we should behold an *independent* commoner, scorning to be so returned : but who is the patriotic representative of three thousand pounds sterling ? a man who, having by frivolous declamation scraped together sufficient entrance money to gain admission to this debating society, has thus procured a better lounge for his evenings, a wider field for his oratory, and a fairer prospect of becoming corrupt and infamous ;—if we should see one man purchasing a seat in the pit, in order to arraign his better-dressed neighbours, for having paid for their place in the boxes ; still we should bless our stars that these were no principles of our Constitution. Let us turn our eyes from abuses which it is painful to contemplate, though but imaginary.

To live subject to a law which is no respecter of persons ; with reference to which all are equal ; and in the heaviness of whose yoke consists the perfection of freedom : to enjoy life, liberty, safety, property, reputation—secured from the invasion of any, be his station what it may : to possess in the penalties of the law a temptation to virtue, which may counteract the temptations to

vice; and to enjoy life and its advantages upon conditions beneficial to the individual, and extending alike to all: to be subject to an independent and invisible judicial power, composed of tribunals, which being temporary and unascertained, are safe from corruption or professional prejudice; and in cases of importance to be tried by judges almost of your own choosing: to be protected from that arbitrary imprisonment, which is rendered more oppressive by the semblance of legality: to be free to do every thing short of injuring a fellow citizen: to live under a Government to which the spirit of virtue, without being indispensably necessary, is essentially useful; compounded of a monarchy, whose hereditary quality precludes intrigue and tumult, whilst its limited nature renders it alike safe, (though not equally advantageous) let who will wear the crown; of an aristocracy, which renders even ambition useful; of a democracy, which feeds the everlasting flame of liberty, and offers an asylum to public virtue*: to possess an
exe-

* Mr. Mitford calls the House of Lords the oligarchical, the House of Commons the aristocratical, and right of election, trial by jury, &c. &c. the de-

executive Government, capable in its nature of energy and dispatch, invested with legislative power enough to protect it from encroachment, though too little to enable it to encroach : to be as much your own governor as is consistent with the welfare of a large State ; and, when you are to be taxed, to be the taxer yourself : to possess a Constitution of no new foundation, but whose beginnings are involved in a venerable antiquity ; one which is not the hasty work of a solitary generation ; whose glory is, that it cannot be “ *produced in a visible form ;*” but is traced back to periods of vague tradition ; whose citizens habitual freedom has rendered worthy of being free ;—a Constitution whose scars, whilst they announce the dangers it has encountered, manifest the vigour which has overcome them ; a Constitution boasting that (for I will allude to it again,) to which the best of antiquity were strangers, and to whose preservation, perhaps, we do not look with that jealous eye, with which we ought to regard it—trial by jury—Such is the No-

mocratical part of our Constitution ; adding, that the democratical power is *more wisely given, and more wisely bounded, notwithstanding some defects, than in any other Government that ever existed.*

Constitution of England: such are the false principles, and incorrigible malformation, which call aloud for a Revolution!—These are more than *Rights of Citizens*; these are the *Privileges of Englishmen*!

FINIS.

B O O K S

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